
IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

SPOKANE & EASTERN TRUST
COMPANY,
Appellant,

vs.

UNITED STATES STEEL PRODUCTS
COMPANY,

Appellee,

No. 3983

and

CENTRAL BANK & TRUST COM-
PANY and E. L. FARNSWORTH, as
Director of Taxation and Examination
of the State of Washington,

Defendants.

*Appeal from District Court, Eastern District
of Washington*

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE CASE

The United States Steel Products Company, the appellee, was plaintiff below and will herein be called the plaintiff. Appellant, the Spokane & Eastern Trust Company, will be called the Trust Company, and its co-defendant, the Central Bank & Trust Company, will be called the Central Bank or the Bank. Where amounts are referred to they will be stated in round figures unless it may chance that the exact sum is material.

By its complaint plaintiff sought to charge the Trust Company as trustee of \$47,000, the proceeds of a collection made for plaintiff by the Central Bank. Broadly stated, these are the facts involved: At the time of the transaction upon which plaintiff bases its action, the Central Bank, which is now insolvent, was a banking house at Yakima, Washington. It was rather a small bank, having a capital of but \$50,000, with deposits of approximately \$500,000. It was not a member of the Federal Reserve System. For several years the Trust Company, whose banking house is at Spokane, had been a correspondent of the Central Bank, the latter having an active account with it. When the deflation period began in 1920, the deposits of the Central Bank began to shrink, and it was necessary for it to obtain money from time to time from outside sources. Its principal shareholder and president was one Sikko Barghoorn, a resident of Spokane, who was a man of considerable means, con-

trolling at least one other country bank, the Colville Loan & Trust Co., and since 1908 a director of the Trust Company. As the Central Bank began to feel the pinch of deflation, Barghoorn applied to the Trust Company for financial assistance. The Trust Company loaned the Central Bank \$20,000 on its note, secured by collateral, rediscounted a goodly amount of paper for it, and permitted it to overdraw from time to time; the latter, however, only in an emergency and in anticipation of a prompt covering. It may be remarked in passing that the extending of such assistance was a common occurrence during the deflation period, not only with the Trust Company but with all the large banks who were members of the Federal Reserve System. As they needed assistance the Federal Reserve extended it to them, and they in turn extended like assistance as needed to the smaller banks that were not members of the Federal Reserve System. Had it not been for this co-operation, this aid extended by the stronger to the weaker, there would have been a financial panic in 1921 which would have far surpassed that of 1893.

The Central Bank had several correspondents with which it carried active accounts; depositing cash items, borrowing money or rediscounting paper, and drawing upon the balances thus created. Its principal correspondent, however, was the Trust Company, especially during the last of 1920 and the beginning of 1921. During that period there was not a banking day passed that it did not deposit considerable sums with the Trust Company, either by the transmission

of checks, drafts and other cash items, or by the re-discounting of paper, and that it did not draw drafts in considerable amounts upon the Trust Company. It appears, indeed, that while the Central Bank had several correspondents, more than half of all the drafts it drew in settlement of its obligations were drawn upon the Trust Company.

On the 18th January, 1921, the Yakima Hardware Company remitted \$47,000 to plaintiff's Seattle office by means of a check for that amount drawn upon the Yakima Trust Company. Plaintiff deposited the check with the Seattle National Bank, and that bank sent the check, together with other checks and cash items, the total amount of which exceeded \$51,000, to the Central Bank for collection. The Central Bank was not a member of the Yakima clearing house association, but cleared through the Yakima Valley Bank, with which it carried a balance for clearing purposes. It received the items from the Seattle National Bank on the 21st January, and put them with other items it had for collection through the clearing house on that day, the total amount exceeding \$58,000. All these items were collected, but by reason of checks drawn upon the Central Bank and presented through the clearing house on that day, the total amount received by the Yakima Valley Bank for credit to the Central Bank was but \$49,000. The Yakima Valley Bank then gave the Central Bank two drafts: one for \$45,000 drawn on the Bank of California at Tacoma, and the other for \$3,000 drawn upon the Fidelity National Bank of Spokane. The balance, \$1,500, the

Central Bank left on deposit with the Yakima Valley Bank. The Central Bank sent the two drafts, together with other cash items, the total of which was \$48,500, to the Trust Company for credit to its account. At the same time it sent the Seattle National Bank a draft for \$51,000, drawn upon the Trust Company, in settlement of the items the Seattle bank had sent it for collection. This draft was not presented to the Trust Company for payment until 26th January, but the Trust Company was informed on the 25th that such draft had been drawn on it. Prior drafts drawn upon it by the Central Bank had by then come in and been paid, whereby the balance of the Central Bank had been reduced to \$24,000. To pay the draft it would be necessary to allow the Central Bank an overdraft of \$27,000. Moreover, a number of rediscounted notes, which were secured by the guaranty or endorsement of the Central Bank, were overdue, and under the arrangement between the two banks the Trust Company had the right to charge these back to the Central Bank. After a survey of the situation and a consultation with Barghoorn, the Trust Company decided that it would not pay the draft when it was presented, and so advised him. He immediately went to Yakima to endeavor to secure assistance from the local banks, but as it was found that the Central Bank would need about \$100,000 to tide it over its difficulties, he was unable to secure it. The Central Bank closed its doors on the 27th January, and the Seattle National Bank, which had refused to assume responsibility for the collection of out-of-town

items, charged the \$47,000 check back to plaintiff's account. Plaintiff then brought this suit against the Trust Company, the Central Bank, and E. L. Farnsworth, the head of the State Banking Department, and as such in charge of the liquidation of the Central Bank. The theory of the suit was that the Central Bank received and collected the \$47,000 check as trustee for plaintiff; that in dereliction of its duty the Central Bank sent the proceeds of the collection to the Trust Company instead of transmitting them to plaintiff; and that the Trust Company received the money with knowledge that it was a trust fund, and belonged to plaintiff. The District Court held that plaintiff was entitled to recover the amount of the check, less certain deductions, from the Trust Company, and rendered judgment accordingly. The Trust Company has brought the case here by appeal from that judgment.

SPECIFICATION OF ERRORS

There was error:

I. In holding that the allegations of the complaint were supported by the proof save with respect to the particular manner in which the check of the Yakima Hardware Company was paid.

II. In holding that the transactions between the Central Bank & Trust Company and Spokane & Eastern Trust Company were contrary to sound law and good morals.

II. In holding that the relation of trustee and

cestui que trust subsisted between the Central Bank & Trust Company and plaintiff with respect to the proceeds of the check of the Yakima Hardware Company which the Central Bank collected for plaintiff.

IV. In holding that the relation of trustee and *cestui que trust* subsisted between the Spokane & Eastern Trust Company and plaintiff.

V. In holding that the proceeds of the check aforesaid were traceable as a trust fund in the hands of either the Central Bank & Trust Company or the Spokane & Eastern Trust Company.

VI. In refusing to dismiss the action as against the Spokane & Eastern Trust Company for want of equity.

VII. In rendering a decree for any relief or in any amount in plaintiff's favor and against defendant Spokane & Eastern Trust Company.

VIII. Finally, if it be held that plaintiff was entitled to any relief against the defendant Spokane & Eastern Trust Company, then the District Court erred in not reducing the amount of the recovery by the amount of the drafts drawn upon the Spokane & Eastern Trust Company by the Central Bank & Trust Company and paid by the former prior to the time it was informed of the draft for \$51,000 drawn upon it by the Central Bank & Trust Company in favor of the Seattle National Bank, and of the circumstances surrounding the drawing of such draft.

ARGUMENT

I. *The Trust Company was guilty of neither legal nor moral wrong in its relations with the Central Bank. On the contrary, it was generous to the point where generosity came in conflict with sound banking methods.*

Upon reading the above headnote, it will no doubt occur to the Court that the question whether the Trust Company dealt fairly or unfairly, generously or sordidly, with the Central Bank, can have no proper bearing upon the decision of the case. We think it has none, but it was made the basis of the decree appealed from, and so it seems desirable to deal with it before taking up the questions which are really decisive of the case.

When the Central Bank collected plaintiff's check, it intermingled the money collected with its general funds and used it in paying its general debts, a part being applied upon its debt to the Trust Company. In so doing it acted in accordance with the custom of banks and its implied contract with plaintiff. Plaintiff has no cause for complaint, and cannot recover in this action, unless it appears that because of its insolvency the Central Bank was guilty of fraud in making the collection in the usual manner, and that because thereof plaintiff may rescind its contract with the Bank, whereby it became plaintiff's debtor for the amount of the collection, and hold the Bank as trustee *ex maleficio* of the money. Necessarily, therefore,

the decisive questions in the case are whether the Central Bank was guilty of a fraud upon plaintiff, whether because of such fraud it may be held as a trustee *ex maleficio*, and whether the trust fund it received was traced into the possession of the Trust Company. Apparently those decisive questions were lost sight of and not considered by the District Judge. The rationale of his decision seems to be found in these words:

“Much was said on the argument about the banking laws of the state, the decisions of our Supreme Court, the commingling of funds, and the relations ordinarily existing between different banks in transactions of this kind. But inasmuch as the case will doubtless go to a higher court, I will not discuss these different questions at length. Suffice it to say that after giving full consideration to the arguments of counsel and the authorities cited I am firmly convinced that under the circumstances disclosed by this record one bank should not be permitted to nurse another along in this way until it finds a favorable opportunity to seize the money of some innocent third party to square its accounts, and then abandon its nursling to the tender mercies of bank examiners and receivers. Such a course is forbidden alike by sound law and good morals.”

(Trans., 21.)

Now, the questions of whether the Central Bank perpetrated a fraud upon plaintiff, and whether because of such fraud plaintiff could rescind the contract by which the Bank became plaintiff's debtor, and hold the Bank as trustee instead, are questions of mixed law and fact. Neither the law nor the facts material to those questions were considered. The law

of the case was relegated to a higher court for decision. The facts were no further remarked on than to say that the conduct of the Trust Company in nursing the Bank along for a time and then abandoning it was contrary to sound law and good morals. What relevancy the assumed fact had to the question of whether the Central Bank was guilty of a fraud upon plaintiff is not discoverable. Quite obviously, the decision went off upon a false issue, and in consequence the issues which must be decided if the case is to be correctly decided were overlooked. However, the judgment appealed from rests upon that false foundation, and so we have thought it best to demonstrate the fairness and good faith of the Trust Company in its dealings with the Bank before taking up the decisive questions.

If one may judge from the slighting remark relative to the Trust Company nursing the Central Bank along, the District Judge was under the impression that in extending assistance to the Central Bank under the circumstances here present the Trust Company did an unusual thing, and that its action was induced by some sinister motive. Such notions are pure figments. The evidence is conclusive that the assistance was necessitated by and was given during the deflation period that followed the war inflation; that the larger and stronger banks all over the country, or at least in the extreme northwest, were required to and were extending such assistance to their weaker brethren during that period; that such action was induced by no improper motive, but by a desire to save the

credit of the country; and that the assistance which the Trust Company gave the Central Bank differed not a whit from the aid it gave other banks similarly circumstanced, save that it was, perhaps, more generous. Stevens, a State bank examiner who testified for plaintiff, said that the deflation period in Washington, Idaho and Montana began in the fall of 1920, and was at its peak about the time the Central Bank closed its doors; that it caused prices to drop, money to become scarce, and bank deposits to fall off; that all banks, except those possessing liquid securities, were forced to look to outside sources for assistance; that banks that were members of the Federal Reserve System got assistance there, while the smaller banks looked to the larger banks for aid; that during this period the Trust Company was extending liberal assistance to a large number of banks throughout the Spokane territory; that the extending of such assistance was not only done with the approval of the State banking department, but that under some circumstances it was done at the solicitation of the department; and that the department knew the Trust Company was extending assistance to the Central Bank. He did not recall the amount of loans and rediscounts to and for other banks made by the Trust Company, but knew it ran into a very large sum; perhaps one-third of its total loans. (Trans., 60-61.)

Triplett, a vice president of the Trust Company, testified that during the deflation period it was extending financial assistance in various ways to from 75 to 100 banks, located in Washington, Idaho and Mont-

ana. At the peak the amount it had out in that way was over \$3,500,000. The great majority of the banks it assisted weathered the storm, but the Central Bank and some six or seven others did not; notwithstanding the assistance given them they were obliged to close their doors. (Trans., 105-107.) Speaking of the effect of the deflation upon bank deposits, the witness said that at the first of January, 1920, the deposits of the Trust Company were over \$15,000,000, while at the first of January, 1921, they were about \$11,000,000, and during the month went down to \$9,500,000. At the first of January, 1920, country banks had on deposit with the Trust Company over \$6,000,000; in the fall of that year their deposits had shrunk to less than \$2,000,000. (Trans., 105.) It should be remarked that in November, 1920, the deposits of the Central Bank amounted to \$665,000, on the 3rd of January to \$513,000, and on the 25th to \$426,000. (Trans., 83-84.) Whether deposits were reckoned in millions or hundreds of thousands, the deflation period appeared to have a uniform proportionate effect on them.

The foregoing testimony was not disputed nor in any way questioned, and it proves that the action of the Trust Company in assisting the Central Bank was not only usual during the financial crisis through which the country was passing, but was meritorious, and was approved of, if not solicited, by the State banking department, the department authorized by the laws of the State to approve of that which is sound and honest and condemn that which is unsound and

dishonest in banking methods.

But the District Court thought that the Trust Company abandoned its "nursling" as soon as it found "a favorable opportunity to seize the money of some innocent third party to square its accounts," and it is upon that supposed offense, evidently, that the decree is based. There are two very sound objections to a decree based upon such a theory. The first is that under the pleadings and evidence plaintiff cannot recover unless it has shown that the Central Bank was a trustee for plaintiff, and that a trust fund belonging to plaintiff was turned over by the Bank to the Trust Company. However unkindly the Trust Company may have treated its "nursling," that fact has no bearing on those questions. The second is that the assumed facts are pure fancies. There was neither abandonment of the "nursling" nor seizure of any third party's money. What occurred was that the Trust Company refused to permit the Central Bank to overdraw its account some \$27,000, believing such an overdraft under the circumstances to be contrary to sound banking. There was no abandonment, for, as we shall point out later, the Trust Company was willing to continue its assistance under conditions that would insure it against loss. It was justified, both legally and morally, in refusing to take chances in its operations. The country was passing through a critical period financially, and it behooved every bank to adhere strictly to sound banking methods. The Trust Company was assisting from 75 to 100 banks, any one of which had as good a claim upon it as any other.

Its outlay for that purpose was over \$3,500,000. In a year's time it had lost \$6,000,000 in deposits. On account of those two things alone, then, it had been required to pay out \$9,500,000 in money. In addition the banking laws of the State required it to maintain a cash reserve of 15% of its total deposits, and, necessarily, it had to keep itself in such a condition that it could supply the pecuniary needs of its local customers. Its primary obligation, of course, was to its own depositors, and it could justify no action that might, by any possibility, imperil its solvency. Unquestionably it could have advanced the additional \$100,000 or more which might have been needed to carry the Central Bank through, and its solvency would not have been impaired although the whole amount had been lost. But no more morally than legally could it be expected to do so. The aggregate of all the demands upon it must be considered in determining how far it ought, in good conscience, to have gone in assisting the Central Bank, and what risks of loss it ought to have taken. The Bank had no better claim upon it than any other country bank, or local customer, who looked to it for assistance from time to time, and it could not properly extend assistance to the Bank which it would not, under similar circumstances, have extended to them. The Bank already owed it \$185,000 to \$190,000 on direct obligations or guaranties or endorsements of rediscounted paper. A goodly amount of the rediscounted paper was overdue, and under the arrangement between the two banks it could have been charged back to the Bank.

This had not been done because, toward the last, the Trust Company saw no prospect of getting anything better in its stead. The Trust Company was strongly opposed to overdrafts, but nevertheless the account of the Bank was overdrawn, in fluctuating amounts, during the greater part of January. The Bank was slow, especially toward the latter part of the month, in covering the overdrafts, and some of the paper it sent on for that purpose did not appear to be desirable. When the Bank drew the \$51,000 draft on the 21st, it made no preparation for covering the heavy overdraft which it knew would result if the draft were paid, nor did it take the precaution to ascertain beforehand whether the Trust Company would permit the overdraft. It was not until the 25th, one day before the draft was presented, that the Trust Company was informed of it. Even then no paper was sent on to cover the overdraft which would result if the draft were paid, nor were there any assurances or promises that it would be promptly covered. On the contrary, the letter which advised the Trust Company of the draft suggested that it might be called upon to advance \$50,000 more on paper of a slow nature, and possibly to permit the substitution of "a poorer class of security" for that which it already held. (Trans., 230.) It was because of those conditions that the Trust Company declined to allow the overdraft. (Trans., 113-114.) Adhering to sound banking methods it could not do otherwise. It was willing to continue its assistance to the Central Bank, but only upon condition that it should not be exposed to

loss in doing so. The drawing of the \$51,000 draft upon it was, in effect, an attempt to exact a forced loan upon the Bank's own terms. Permission was not sought to make the overdraft, no preparation was made for covering it, the Trust Company was not informed until the day before the draft was presented that such an overdraft was desired. It was placed in a situation where it was required to decide almost immediately whether it would pay the draft and trust to the good will and ability of the Bank to cover the overdraft that would be created, or would dishonor it. Morally as well as legally it was in the right in refusing to be hurried into a \$27,000 loan of the safety of which it was not sure.

The District Judge rejected these very apparent reasons for refusing to permit the overdraft in favor of a secret, sordid motive; the opportunity thereby afforded the Trust Company to seize the \$48,000 remittance. It is manifest that the evidence was forgotten or overlooked else such a conclusion would not have been reached. One whose purpose is the seizure of money without regard to others' rights may be depended on to make the seizure when the largest amount of money is obtainable. If the Trust Company can be considered to have seized the money in question, it could have got twice as much as it did by making the seizure two or three days earlier. The \$48,000 remittance was received and credited to the account of the Bank on the 22nd. The credit extinguished an existing overdraft and gave the Bank a balance of \$38,000. During the next two or three

days smaller remittances, and some notes for rediscount, the whole amounting to \$5,000 or \$10,000, were received and credited to the Bank. During the same period, however, a number of drafts, one for \$17,000, drawn by the Bank upon the Trust Company, were presented and paid, so that on the 25th, when the Trust Company decided that it would not pay the draft, the Bank had a balance of but \$24,000. (Trans., 111-112, 119.) If the Trust Company was animated solely by sordid motives, its purpose being to seize all the money it could, it is evident that as soon as the \$48,000 was received it would have been applied upon the Bank's indebtedness, that the same use would have been made of the smaller remittances received during the next few days, and that no drafts would have been paid. Had that course been pursued the Trust Company would have obtained \$40,000 to \$50,000 instead of the \$24,000 it did get. That it was not pursued is in itself sufficient to prove how wrong the District Court was in the conclusion it reached concerning the transaction.

There are other circumstances which equally relieve the Trust Company from the imputation of sordidness and prove it to have acted in entire good faith. Early in the transactions between the two banks, the Central Bank pledged \$20,000 in Liberty Bonds to secure a note it gave the Trust Company. In the latter part of January, when the Bank began to have difficulty in keeping up its cash reserve, the Trust Company permitted the Bank to withdraw the bonds, sell them, and use the proceeds for building up its

reserve. In lieu of the bonds the Trust Company received slow notes as security, many of which were not paid at the time of the trial. (Trans., 107, 118, 136-138.) The exact date of the substitution was not fixed by the evidence, but it was evidently about the 21st. (Trans., 227-228.) It does not need remark that if seizing money was the governing motive of the Trust Company in its dealings with the Bank, it would never have relaxed its grip upon anything so like money as Liberty bonds.

The generous attitude of the Trust Company is exemplified by an incident which occurred just before the Central Bank closed its doors. Stevens, a State bank examiner, reached Yakima for the purpose of examining the Bank on the morning of the 26th. He knew of the outstanding draft for \$51,000, and that the Trust Company would not pay it. When he looked at the Bank's balance sheet he saw steps would need be taken immediately to provide money to pay the draft, and he called the bankers of Yakima in conference upon the means for raising the money. They agreed to advance certain sums, enough to take care of the draft but not to permanently relieve the Bank's cash shortage. He then called up the Trust Company and the Bank's correspondent at Seattle to ask them to help. The Seattle bank promised to do something but would not commit itself to anything definite. The Trust Company agreed to advance \$15,000. As the Yakima bankers went more thoroughly into the assets of the Bank, they concluded that more money would be needed to relieve its em-

barrassment, probably as much as \$100,000, and the examiner called up the Trust Company again to ask it to increase the amount it would advance. It then agreed to advance \$20,000. (Trans., 57-58.) Nothing came of this, for the Yakima bankers offers of assistance "petered out," as the examiner expressed it, and the Bank was obliged to close. But the good faith of the Trust Company's offer cannot be questioned and it permits no doubt that throughout its motives were of the best, and that it was willing to do all it safely could to keep the Bank going.

Furthermore, no reason is discoverable for the anxiety of the Trust Company to "square its accounts" which is imputed to it. It need never have permitted the Central Bank to get in its debt, and it was at liberty to refuse further advances whenever it thought the debt was growing too large or the security poor. Early in January the debt was but \$142,000, for which, among other securities, it held \$20,000 in Liberty bonds. At one time during the month the debt went as high as \$212,000, and on the 25th, before the overdue rediscounted notes were charged back to the Bank, it amounted to \$185,000 or \$190,000. (Trans., 118, 136.) And although the debt was increasing, the Trust Company, for the accommodation of the Bank and to enable it to maintain its cash reserve, permitted the withdrawal of the Liberty bonds and took slow notes in their stead. When the Trust Company had all along been so liberal in its dealings with the Bank, permitting the debt to increase and the security to become impaired, it is unreasonable to assume that

it all at once became obsessed with a mad desire to "square accounts" with the Bank, and was willing to cause its failure in order to get \$24,000 in money.

We think, however, that the most complete refutation of the view adopted by the District Judge is found in a number of letters which were introduced in evidence by plaintiff. These passed between Triplett, a vice president of the Trust Company who had charge of its transactions with country banks, and Buckholtz, an employe of the Central Bank. Of Buckholtz' connection with the Central Bank we shall have more to say under subsequent heads. It suffices for present purposes that he was a young man who had been an employe of the Trust Company for several years, and was highly esteemed by its officers. The State banking department disapproved of Ellis, the cashier of the Central Bank, who, by reason of the non-residence of Barghoorn, its president, was virtually its manager. Barghoorn had agreed to get a man to take Ellis' place, and asked the officers of the Trust Company to recommend some one for the position. They recommended Buckholtz, and Barghoorn employed him to go to Yakima, familiarize himself with the Bank's operations, and, if he proved efficient, to succeed Ellis as soon as the change could be made without causing trouble. Buckholtz went to Yakima on the 6th January. No official position was given him, but he was put in charge of the credit department, the position he had occupied with the Trust Company. His principal duties were to restrict the making of new loans and enforce collection of old ones; mat-

ters in which Ellis was very lax. Along with these duties he was authorized to select from the paper of the Central Bank such as he thought would be eligible for rediscount with the Trust Company, get information concerning it which would enable the Trust Company to pass upon its eligibility, and forward it to the Trust Company as the Central Bank needed to raise money by rediscounting. While Triplett had been his superior in the Trust Company, and was evidently an older man, they were on very friendly and intimate terms, addressing each other generally as "Dear Trip" and "Dear Buck." The letters on both sides were very frank and aboveboard, it being apparent that the writers expressed themselves freely and without reserve upon the topics under discussion. The matters dealt with principally related to paper offered for rediscount and rediscounted paper that was falling due, but Buckholtz also wrote freely of conditions as he found them in Yakima and in the Central Bank. Prices were falling, farmers would not sell their produce or sold at a loss, and wanted the banks to carry them until conditions got better. Ellis was disposed to yield to such pressure, granted renewals readily and was lax in enforcing collections, and Buckholtz found it difficult to inject the desired stiffening into the credit operations of the Central Bank. To such letters the officers of the Trust Company, principally Triplett but once or twice Mr. Rutter, its president, replied quite fully, expressing their view of the financial situation generally, and the necessity for firmness in enforcing collections and restricting credit.

There are too many of these letters and they are of too great length to permit of reference to them separately. But speaking of them generally, they establish beyond question that while the writers felt that the Central Bank had been too lenient in extending credit and enforcing collections, nothing was needed but more firmness in such matters and some temporary assistance, such as the Trust Company was extending, to tide it over the deflation period. That the Trust Company intended to extend such assistance its officers' letters leave no doubt. In illustration, Buckholtz wrote Mr. Rutter on the 9th January that the withdrawals (of deposits) had ceased, and that if the (farm) products would sell at all at reasonable figures he was confident "that we can get by and liquidate our indebtedness within 90 days." (Trans., 148.) Under date of the 10th Mr. Rutter replied, congratulating Buckholtz on the "strong position" he was taking, but cautioning him that banks were passing through a troubled period and firmness in making collections was essential. Of the attitude of the Trust Company it was said: "If your hypothesis is correct there is no question but what we will do our part." (Trans., 53.)

Under date of the 20th January Triplett wrote Buckholtz concerning a particular loan, advising stringent measures to make the borrower pay, and ending in this wise with respect to the general situation:

"Messrs. Ellis and Barghoorn both seem to feel that if you put on the pressure too hard the borrowers will begin to talk about the bank, and to

some extent we feel they are right—but on the other hand, fear is about the worst thing in the world. It causes a man to neglect his business and to almost crawl into a hole and pull the hole in after him. The fellow who goes on about his business and does what is right, having the diplomacy of which we well know you are possessed, is bound to come out on top, and I have not the slightest idea but that you can pull things out along those lines.”

(Trans., 202.)

On the same day Triplett also wrote him as follows:

“I want to again impress upon you the necessity of keeping right on top of these borrowers and not letting them get away from you. We have had so much grief this year that we have come to realize that no dependence can be put in either the market or the predictions of the borrowers. They are all optimistic and seem to feel that as soon as spring opens up things will begin to move, while, as a matter of fact, there is nothing in sight to verify their predictions. Money is tighter than ever, is hard to get; people are not buying anything unless they have to, and that includes food stuff as well as clothing, and we do not look for any decided movement until prices stabilize somewhere, and the stabilization point has not yet been reached. Things may hang around a given point for a few days, but everything is on the down grade and they will go a good deal lower before they come back to any kind of normal basis. Prices have been abnormally high, and they must go sub-normally low before finally adjusting themselves.

* * * * *

Your account is overdrawn tonight \$7,726.10, and the big Seattle check has not shown up yet. It looks like you will have to pass along a few

more rediscounts.”
 (Trans., 204-205.)

The “big Seattle check” was the draft to the Seattle National Bank for \$17,700 which was referred to in Buckholtz’ letter of the 19th. (Trans., 198.)

On the 21st Triplett wrote in three different letters:

“Your account has been credited with \$4,411.42 to cover the proceeds of the rediscounts sent in your letter of January 20.

They look better than the average run of notes, and we believe you will be able to work them out. We are not concerned much about Barney, as he seems to have plenty of assets and to be a mighty good customer.”

* * * * *

“As requested, we are using the notes of B. L. Chaney \$1,000 and S. L. Allen \$1,934.20 as collateral to your loans in place of the Wapato Construction note \$2,500.

* * * * *

We could be arrested for what we think of the Allen note. While on paper it sounds good, his statement shows a net worth of such a small amount as compared to what he owes that he seems hopelessly lost in the shuffle. However, for the reason that it has to be done, we are making the substitution for you. Mr. Allen may be able to pay out of his 1921 crop, but all of you fellows who are connected with the Central Bank & Trust Company had better get right down on your knees and start to praying that everything will run along right, or I fear you will never get the money.”

* * * * *

“Your account has been credited with \$10,-622.16 to cover the proceeds of the rediscounts sent in your letter of January 19. You have been charged \$4,752.48 to retire the note of

Jerome Lewis, renewal of which was enclosed to you.

* * * * *

As to Jerome Lewis—it is one of those things that may take a long time to work out. Under ordinary circumstances we would not be favorable to making such a loan because things are too uncertain, but for the good of your bank the Executive Committee passed it through.”

(Trans., 207-209.)

Under date of the 21st Buckholtz wrote a long letter on general conditions in Yakima and in the Central Bank. The effect of it was that all the Yakima banks were carrying a heavy load, but that all were confident “of a good washing out of stuff during the next 90 days” through the sale of farm produce. In the meantime, Buckholtz said, it was going to be difficult for the Central Bank to keep up its cash reserve. He thought that to do so it would be necessary for the Bank to retain collections on hypothecated paper which it made, and to send the Trust Company other paper in lieu of the money. The effect of this, he recognized, would be that the Trust Company would get more and more undesirable paper; in other words, paper which would probably not be paid before the 1921 crops were marketed. The only other way he saw to keep up the Bank’s cash reserve was to arrange “the Liberty bond loan in Seattle as we have done with you,” *i. e.*, get “Herb” (Herbert Witherspoon, vice president of the National City Bank of Seattle, a bank which had been extending assistance to the Central Bank along the same lines as the Trust Company, albeit not so liberally (Trans., 89), to surrender

the Liberty bonds he held as collateral so they might be sold, and take real estate contracts and mortgages in lieu of them. He closed by saying that "unless you insist, we will continue to hold what few pennies we might collect on your collateral notes and substitute other stuff, which I hope you will O. K. for the present." (Trans., 219-222.)

To this Triplett, writing under date of the 24th (the day before the apocryphal seizure of plaintiff's money), demurred. He foresaw that this would result in the Trust Company's collateral getting "more and more shoddy as time goes on." He thought "Herb" ought to be willing to help the Central Bank out in the manner suggested, and requested Buckholtz to immediately get in touch with "Herb" and ascertain if the latter would not buy the Liberty bonds, which would give the Central Bank \$30,000 in money, and accept notes and mortgages as security in their stead. There was, however, no flat refusal to comply with Buckholtz' request in the event that "Herb" proved obdurate. On the contrary, Triplett said that if "he will not do that, get him to purchase the Liberty bonds and send us your note for \$30,000 collateralized by one and one-half to one of 'good but slow' paper. What I mean by that, is paper which although it will ultimately be paid cannot be liquidated from so-called quick assets." Expressing the feeling of the Trust Company with respect to continued assistance, it was said:

"We are willing and ready to stand back of the institution to a reasonable extent, but feel in

so doing we should have a class of paper which will prevent any loss on our part. Many of the notes we have taken on are not up to our regular standard, and it was only because of your judgment after investigating at close range that we were willing to take them. Naturally, we do not want to take any more uncertain paper if it can be helped.

* * * * *

It is one thing for us to get behind the bank and another thing for us to take a loss on it. Deposits are bound to slump, but we do not want to be in a position of having to pay them off at a sacrifice to our stockholders.

I mention these things so you will understand that while our feeling is the most friendly in the world and we are willing to do everything we can as long as the stuff is reasonably good, we do not want to get into the position where we will ultimately lose anything."

(Trans. 224-226.)

This last letter was written two days after the receipt of the \$48,000 remittance. It is evident that it, at least, was not read by the District Judge. The money which he thought the Trust Company was only waiting "a favorable opportunity to seize" was already in its hands. It did not desire to put any more money into "good but slow" paper; all banks were at that time too much loaded down with that commodity. It had already complained of the character of some of the paper the Central Bank offered for rediscount, although it was accepted in order to aid the Bank. And yet, with the \$48,000 in its hands, it was not ready to "abandon its nursling to the tender mercies of bank examiners and receivers," but instead offered to take on an additional load of \$30,000 if it was

necessary that it should do so, provided that it was furnished with collateral which was reasonably good, however slow. The generosity of the tone of this letter, and the sincere desire of the Trust Company to continue its assistance if it could be made reasonably safe in doing so, are unquestionable. Entertaining the high opinion that we do of the District Judge, we are forced to the conclusion that he read none of this correspondence; most certainly not this last letter.

Probably this letter will be made the text for questioning the sincerity of the reasons given by the Trust Company for refusing to permit the overdraft, and it will be asked why it was that if the Trust Company was willing on the 24th to make an additional loan of \$30,000, it should have refused on the 25th to permit an overdraft of \$27,000. Slight consideration furnishes several obvious answers to the question. The first is found in the provision of the State banking code that "Every transfer of its property or assets by any bank * * * made in contemplation of insolvency, or after it shall have become insolvent within the meaning of this act, with a view to the preference of one creditor over another, or to prevent the equal distribution of its property and assets among its creditors, shall be void." Session Laws 1917, pp. 298-99, Remington's Comp. Statutes 1922, §3262. In view of this statute, it is apparent that if the Central Bank was insolvent, and the Trust Company had reason to believe that it was so, yet permitted it to overdraw, afterward getting securities to cover the overdraft, such securities could be recovered by the liquid-

ator of the Bank if its doors were subsequently closed. Now on the morning of the 25th Mr. Rutter received a very pessimistic letter from Buckholtz relating to the Bank's affairs. It appeared from it that unless conditions changed for the better soon the Bank would be in serious difficulty. While Buckholtz spoke of several avenues by means of which the Bank might extricate itself from its difficulties, he said that if all these failed "it sifts itself down to whether you desire by all means to keep this institution open by all possible means, depending more or less on Mr. Barghoorn's personal credit, or whether you have set a limit as to how far you will go." He told of the \$51,000 draft that had been sent the Seattle National Bank, said that if it was paid "the overdraft created will be the limit to date of credit advanced this institution," but that "if you do not pay it, we are gone." (Trans., 227-232.) Here, certainly, was food for thought, and the situation received thought. The executive committee met, Mr. Graves, the attorney for and one of the directors of the Trust Company, was called into consultation, and it was finally decided not to pay the draft. (Trans., 122.) Ascribing to Mr. Graves ordinary knowledge of the law and ordinary caution in dealing with situations where large sums were involved, it must be assumed that he advised the executive committee that the letter put the Trust Company upon inquiry concerning the solvency of the Central Bank; that if it was insolvent, and the Trust Company allowed the overdraft, afterward taking securities to cover it, the securities could be recovered

by the liquidator of the Bank if its doors were subsequently closed. The committee, confronted with the alternatives of refusing to allow the overdraft, keeping the Bank open at whatever cost, or losing the securities it received to cover the overdraft in the event of the Bank's failure, prudently chose the first.

Other equally obvious answers are these: There is a vast difference between permitting one to overdraw, trusting to his ability and good disposition to afterward give adequate security therefor, and making a loan upon security which must be submitted and approved beforehand. The Central Bank had been making overdrafts and subsequently covering them with unsatisfactory paper, and the Trust Company did not desire to experiment on so large a scale.

Under the arrangement proposed in the letter, the Central Bank would have got \$30,000 in cash without increasing its indebtedness one dollar. It owed the National City Bank \$30,000, the debt being secured by a pledge of \$30,000 in Liberty bonds. The proposal was that the Trust Company would take over the National City Bank debt, accepting as security therefor "good but slow" paper, and thus release for sale the bonds which were pledged to the National City Bank. If the overdraft had been permitted the Central Bank would still have owed \$30,000 to the National City Bank, and would have increased its indebtedness to the Trust Company by \$27,000. The amount which a debtor owes affects his ability to pay, and the Trust Company might well be willing to take

on an additional burden of \$30,000 if thereby a debt of that amount which the Central Bank owed to another creditor was paid, but be utterly unwilling to assume the added burden if it meant an increase of so much in the total indebtedness of the Bank.

It should be remarked that overdrafts have always been frowned on, by courts as well as by banks. It has been held that allowing an overdraft was a misapplication of a bank's funds, and that a cashier could not justify his allowance of an overdraft by the plea that it was authorized by the board of directors. *Minor vs. Mechanics' Bank*, 1 Pet. 46, 71. Though the practice of paying overdrafts has prevailed to some extent, it is one that should not be sanctioned, for "it has no authority in sound usage or in law." *Lancaster Bank vs. Woodward*, 18 Pa. St., 357. "The bank had no legal right to permit the drawer to overdraw and pay his check out of the funds of other depositors, or the money of the stockholders." *Culver vs. Marks* (Ind.), 23 N. E., 1086, 1089.

There was, manifestly, sound reason, not whim or improper motive, behind the distinction which the Trust Company made between making a loan, secured by collateral, to the Central Bank, and permitting the latter to overdraw.

Something will be attempted to be made, no doubt, of the fact that the account of the Central Bank was frequently overdrawn during January, and that in some instances the overdraft apparently exceeded that which would have resulted had the \$51,000 draft been paid.

The amounts of these overdrafts, as put in evidence by plaintiff, were taken from the books of the Central Bank, and do not prove that the Trust Company actually permitted an overdraft of the amount shown on the Bank's books. The books of the Trust Company and the Bank never corresponded with respect to their balances on a given day; there might be a discrepancy of \$25,000 to \$50,000 between them. If the Bank on, say, the 7th, drew drafts upon the Trust Company aggregating \$50,000, an entry would be immediately made on the Bank's books debiting the Bank and crediting the Trust Company with their amount. If the Bank then had no balance with the Trust Company, the Bank's books would show a \$50,000 overdraft. However, the drafts might not be presented for several days or a week or two, and before they were presented the Bank might have made remittances sufficient to cover them, so that in fact there would never have been any overdraft, albeit one was shown for a time on the books of the Bank. (Trans., 43.) An apt illustration appears from the books of the Bank during its last days. They showed from the 22nd to the 27th an overdraft running from \$13,000 to \$56,000. (Trans., 87.) The books of the Trust Company showed that for the same period the Bank had a balance running from a few hundred dollars to \$38,000. (Trans., 111-112.)

But let that pass. With the exception of the overdrafts which were erroneously shown to have existed between the 22nd and 27th, the books of the Central Bank showed no large overdrafts except from the 3d

to the 7th. (Trans., 87.) At that time, however, the Bank's rediscounts amounted to only \$115,000, while from the 22nd to the 24th its rediscounts amounted to \$190,000. (Trans., 85.) Furthermore, the credit of the Bank was much better during the first part of the month than it was towards the last. The continued shrinkage in deposits, the difficulty it was experiencing in keeping up its cash reserve, and the unsatisfactory paper it was asking the Trust Company to accept for rediscount and to cover overdrafts, necessarily induced caution on the part of the Trust Company in the extension of credit. Obviously, conditions from the 3d to the 7th were so different from what they were from the 22nd to the 27th, that the allowance of an overdraft during the first period would be no criterion by which to determine whether it could prudently have been allowed during the second period.

The offer of the Trust Company, in response to the application made to it by the bank examiner on the 26th, to donate \$15,000 to \$20,000 to a fund to keep the Central Bank open, may be invoked to cast doubt upon the sincerity of the reasons given for refusing to allow the overdraft. It can have no such effect. While called a donation it would not, of course, have been that, for if the Bank had been rescued and restored to solvency, it would have been obligated to repay all the money advanced to it to effect that result. But had it been an out-and-out donation the Trust Company could well afford to have made it. It would have joined a number of other banks in making up a fund large enough to relieve the Bank from its

present embarrassment not only, but to recoup its losses and put it firmly on its feet, so it would need no further assistance. Had the Trust Company allowed the overdraft, the only effect would have been to relieve the present embarrassment of the Bank, still leaving to the Trust Company, unaided, the burden of carrying the Bank through the deflation period, or else bringing on the same crisis later by refusing assistance. Furthermore, the Bank owed the Trust Company on notes and guaranties of rediscounted paper \$162,000; not counting the rediscounts charged back on the 25th, \$185,000 to \$190,000. (Trans., 136.) If the Bank's losses were recouped by means of the proposed fund, so that it was restored to solvency, the Trust Company would be sure of collecting the debt owing it, otherwise it would have to depend solely upon the solvency of the makers of the paper that it held. The Trust Company was not any too well informed concerning their solvency; indeed, by reference to the Triplett-Buckholtz correspondence it will be seen that it entertained considerable doubt of the solvency of some of them. If it could be made safe on the existing debt, and be relieved from further requests for assistance, it could have well afforded to give, unrestrictedly, \$15,000 to \$20,000.

Mayhap facetiousness will be indulged in because of the desire expressed in the letter to aid the Central Bank, coupled with the statement that in doing so the Trust Company did not intend to be put in a position where it would sustain a loss. A bank official who felt any other way, especially in a time of

financial distress, should be promptly removed for incompetence, if not dishonesty. He, more than any other, must put justice before generosity. The money he loans is not his but belongs to the depositors in his bank, with remainder over, if any there be, to its shareholders. In a year's time the Trust Company had lost \$6,000,000 in deposits. That meant, of course, that it had to keep its cash reserve intact and collect \$6,000,000 from its borrowers in order to pay off its withdrawing depositors. In addition it had loaned or otherwise supplied to smaller banks over \$3,500,000 and must have had loans to its customers in a much larger amount, for the bank examiner estimated that its loans to banks were about one-third of its total loans. Its officers would have been insane if in every loan they made they had not proceeded on the principle that the bank should not be put in a position where it would sustain loss.

We are impelled to the conclusion that in this case the fine judicial balance of the District Judge failed him, and that he permitted suspicion to take the place of the preponderance of evidence that is needed to sustain his harsh decision. An almost parallel case is found in *Dunlap vs. Seattle National Bank*, 93 Wash., 568, 161 Pac., 364. A trustee in bankruptcy of an insolvent bank brought suit against one of its correspondent banks, alleging that the two banks had conspired to defraud by the correspondent bank advancing money to the insolvent to enable it to keep its doors open and obtain deposits, the deposits being then turned over to the correspondent bank and applied

upon the indebtedness of the insolvent bank to it; it being alleged that more than \$200,000 was thus received by the correspondent bank. The only evidence to sustain these allegations was that the insolvent bank was hopelessly insolvent; that the condition of the insolvent bank had been a matter of concern to the correspondent, which knew that if it did not advance money from time to time to the latter it would be obliged to close its doors; that the correspondent did loan the insolvent large sums of money, whereby the latter was enabled to keep its doors open and receive deposits in considerable amounts, much of which was deposited with the correspondent and reduced the indebtedness of the insolvent to it; and that as soon as the correspondent declined to extend further assistance the insolvent was forced to close its doors. It was held that the evidence was insufficient to sustain the allegations of the complaint, the Court saying:

“The plaintiff, in support of his charge, does not rely upon positive testimony, but upon circumstances, claiming that these establish the charge as made. Fraud cannot be inferred from facts and circumstances lawful in themselves and consistent with an honest purpose. If, when all the facts and circumstances are taken together, they are consistent with an honest intent, proof of fraud is wanting.

In *Foster vs. McAlester*, 114 Fed., 145, the circuit court for the eighth circuit, said:

‘Fraud cannot be inferred either by the court or jury from acts legal in themselves, and consistent with an honest purpose. The settled rule on this subject is that slight circumstances, or circumstances of an equivocal tendency, or circumstances of mere suspicion, leading to no cer-

tain results, are not sufficient to establish fraud. They must not be, when taken together and aggregated—when interlinked and put in proper relation to each other—consistent with an honest intent. If they are, the proof of fraud is wanting’.”

We would paint no halo around the Trust Company. Undoubtedly business, not sentiment, dominated its relations with the Central Bank. It assisted the Central Bank just as it did many other banks: for business reasons. It did not intend to throw its money away, and expected to continue its assistance only so long as it was reasonably safe in doing so. No one would expect a bank, especially during a financial crisis, to do otherwise. But we challenge plaintiff to indicate a shred of evidence tending to convict it of dishonesty or unfairness. No improper motive can be suggested for it beginning the task of aiding the Central Bank during the financial depression. Certainly no such motive influenced it to continue the task while the demands of the Bank increased and the security it had to offer became poorer in quality. The discontinuance of the assistance was as free from taint. Justice to its depositors, justice to its shareholders, justice to the many other small banks which were depending on it for assistance, forbade that the Trust Company should advance money to the Bank when the latter was disinclined or unable to give adequate security therefor. Had its refusal to allow the heavy overdraft which the Central Bank attempted to fasten on it been prompted by unfairness or sordidness, it would not, just a few days before, have per-

mitted the Bank to withdraw \$20,000 in Liberty bonds and substitute inferior security therefor; it would not, the day before, have offered to take over the \$30,000 debt to the Seattle bank if "good but slow" paper was given it as security, so that \$30,000 in Liberty bonds might be released to the Bank for sale; and it would not, the day after, have offered to contribute \$15,000 to \$20,000 to a fund which should be sufficient to relieve the Bank from its embarrassment. Most assuredly if its refusal to pay the \$51,000 draft was animated by its desire to get some money to apply on the Bank's indebtedness to it, the money would have been taken and applied when it came in, several days before, and not after it had been reduced by more than half by the payment of drafts drawn by the Bank. The evidence permits no other conclusion than that the Trust Company began and continued its assistance to the Central Bank for sound and legitimate business reasons, and that for the same reasons it refused to allow the heavy overdraft which payment of the \$51,000 draft would have created. Any notion that the Trust Company nursed the Bank along and finally abandoned it for an improper purpose is the product of sheer, stark suspicion, and is conclusively refuted by the evidence.

II. *The relation between the Central Bank and plaintiff was that of debtor and creditor, and consequently the money which plaintiff seeks to recover was not a trust fund to which it is entitled.*

The Trust Company can only be held liable on the

theory that the Central Bank collected plaintiff's check and held its proceeds as trustee for plaintiff, and that the trust fund thus created was wrongfully turned over to the Trust Company. The evidence establishes that the Central Bank was not plaintiff's trustee for the proceeds of the collection but merely its debtor therefor. That being the case, the money which the Central Bank remitted to the Trust Company on the 21st belonged to the Bank, the Trust Company was at liberty to pay it out on the drafts or apply it on the indebtedness of the Bank, and plaintiff cannot follow and reclaim it.

This is what occurred with respect to the collection of the check: Plaintiff deposited it with the Seattle National Bank, and the latter sent it, together with a number of other checks drawn on Yakima banks, the total of which exceeded \$51,000, to the Central Bank for collection. The Central Bank was not a member of the Yakima clearing house, but availed itself of the clearing house facilities by clearing through the Yakima Valley Bank, a member bank. On the morning of the 21st, the date it received the items for collection from the Seattle National Bank, the Central Bank placed those items, together with a number of other checks drawn upon Yakima banks which it held, the total amount exceeding \$58,000, with the Yakima Valley Bank for collection through the clearing house. The procedure in collecting through the clearing house was described, though not very clearly, by the witness Lemon. (Tras., 35-40.) Enough appears, however, to show that the Yakima clearing house was of the

usual clearing house type, and afforded a means for the common presentment and exchange of checks and similar obligations held by each member of the association against every other member, and a settlement of the resulting differences in their accounts against each other. 7 *Corpus Juris*, 896. The usual clearing house procedure is substantially as follows:

“In practical operation it is a place where the representatives of all the national banks in this city meet, and, under the supervision of a competent committee or officer selected by the associated banks, settle their accounts with each other, and make and receive payment of balances, and so “clear” the transactions of the day for which the settlement is made. These payments may be made in cash or by such form of acknowledgment or certificate as the associated banks may agree to use in their dealings with each other as the equivalent or representative of cash.”

Crane vs. Fourth St. Bank (Pa.), 34 *Atl.*, 296.

For an epitome of the rules and procedure of the Seattle clearing house, doubtless a typical association in the State of Washington, and of the conditions upon which a non-member bank may avail itself of the advantages of the association, see *Moore vs. American Sav. Bank*, 111 *Wash.*, 148, 189 *Pac.*, 1010. Concerning non-member banks generally, see 7 *Corpus Juris*, 899.

Resuming the narrative, apparently all the items presented by the Central Bank through the clearing house on the 21st were paid. However, checks aggregating some \$9,000, drawn upon it and held by other Yakima banks, were presented through the clear-

ing house on the same day, so that as a result of the day's clearings the Yakima Valley Bank received but \$49,500 for the Central Bank. Of this amount, \$1,500 was left on deposit with the Yakima Valley Bank, and \$48,000 was sent to the Trust Company for credit to the account of the Central Bank. In settlement of the collections received from the Seattle National Bank, the Central Bank sent it a draft for \$51,000, drawn upon the Trust Company. This draft was received and presented for payment in due course, presentment being made and payment refused on the 26th. The Central Bank closed its doors on the 27th. It was not until after this occurred that any objection was made to the method of collecting and settling for the check that was pursued, and it was sought to hold the Central Bank, and through it the Trust Company, as trustee of the proceeds of the collection.

It should be added that it was not contemplated on either side that when the Central Bank made the collection it should hold the money collected as a special deposit, and remit in specie. It was intended that that should be done which was done, *viz.*, that the Central Bank should commingle the money collected with its own funds, and make settlement by a draft drawn upon some other bank in which it had funds on deposit. The Bank had for some time been the Yakima correspondent of and made collections for the Seattle National Bank. The method pursued in this case was the method invariably pursued in making such collections. (Trans., 41-42.) Indeed, it appeared that from the 17th to the 22nd January the

Central Bank had made collections for the Seattle National Bank amounting to \$100,000 (including the one involved), and that settlements for all such collections were made by drafts drawn upon the Trust Company. (Trans., 140-141.)

Moreover, the custom of banks with respect to such matters is so established and well known that every one dealing with them is presumed to have been conversant with and to have contracted in contemplation of the custom, and that the courts will take judicial notice of it. *Boxman vs. Bank*, 9 Wash., 614, 38 Pac., 211, *Commercial Bank vs. Armstrong*, 148 U. S., 50, *First Nat'l. Bank vs. Davis* (N. C.), 19 S. E., 280. Every one knows that out-of-town checks are collected through correspondent banks; that a collecting bank does not collect each check directly from the bank upon which it is drawn and remit therefor in specie, but that all the checks it has for collection are thrown into hotchpotch and collected through the clearing house; that the collecting bank will receive nothing from the checks it presents unless the balance of the day's clearings chances to be in its favor, and in any event will receive nothing but the difference between the amount of the checks which it presented and the amount of the checks which were presented against it; and that therefore remittances to cover collections will be made from the bank's general funds, and not from the specific money collected. What every one knows the courts will judicially notice, so, as above remarked, they will judicially notice the custom of making collections by banks.

Now, whenever it appears, either from the agreement between the parties, or, when there is no special agreement between them, by reference to the general banking custom, that the collecting bank was not to hold the money collected as a special deposit and remit in specie, but was expected to commingle such money with its general funds and make settlement by means of a draft drawn on another bank, it is uniformly held that when the collection is made the relation between the collecting bank and the customer or correspondent for whom it makes the collection is that of debtor and creditor, and not that of trustee and *cestui que trust*. In *Bowman vs. First Nat'l. Bank*, 9 Wash., 614, 38 Pac., 211, the facts and the opinion of the Court thereon were as follows: Plaintiffs (respondents in the Supreme Court) sent a draft, drawn upon third parties, to the defendant bank for collection. The bank collected the draft, and in settlement sent plaintiffs its draft, drawn upon a New York bank. Before that draft reached plaintiffs, the defendant bank closed its doors, and when it was presented to the drawee, payment was refused. Plaintiffs brought suit against the defendant bank and its receiver, seeking to establish that the money collected was a trust fund. It was held they could not recover; that a trust relation was not involved, but merely that of debtor and creditor:

“It follows that, in our opinion, the transaction, even if uninfluenced by any action of the respondents after the collection was made, would have established between them and the defendant bank the relation of creditor and debtor, and not

that of *cestui que trust* and trustee. But, if this were not so, the act of the respondents in receiving the draft, and forwarding it for collection, would clearly show an intent on their part to pass the title to the specie collected to the defendant bank, and accept its responsibility as drawer of the draft of which they were the payees in lieu thereof. They accepted such draft without objection, and disposed of it in the usual course of business, and by so doing put themselves in the same relation to the bank as they would have been if they had forwarded the money, and directed it to send its draft or certificate of deposit therefor."

Another pat decision is *Hallam vs. Tillinghast*, 19 Wash., 20, 52 Pac., 329. The findings of fact in that case were that plaintiff (respondent in the Supreme Court) deposited an out-of-town draft with a bank for collection; that he "delivered said draft to said bank for collection only and for no other purpose;" that he "never deposited or agreed to deposit the proceeds of said draft or any part thereof with said bank;" and that the bank suspended payment a few days after the draft was collected. It was again held that no trust relation was involved, and that the proceeds of the collection could not be pursued as a trust fund.

"There is no contention that there was any agreement that the particular money should be preserved in specie. In fact, it must be presumed, under the custom stated, that the particular money paid to satisfy the draft was never received by the bank here, as following the custom, the draft would be sent by the bank to its correspondent where the draft was payable, for collection, and, when paid, under such custom the specie would

not be remitted, but the bank sending the draft would be credited with the amount merely, and such matter left for future settlement in the balancing of accounts. The respondent was bound to know this custom. The fact that he never specially agreed to deposit the proceeds of the draft with the bank made no difference. If he wanted to except it from the usual custom there should have been an agreement that the specific money should be set aside for him, or disposed of in some particular way, or, at least, that upon the payment of the draft a like amount should be segregated from the general funds of the bank and kept for him, thus keeping the proceeds in a special substituted form. Had this been done prior to the insolvency of the bank no doubt a trust would have resulted as against the receiver, if the particular proceeds in either the original or substituted form came into his possession."

In *Commercial Bank vs. Armstrong*, 148 U. S., 50, a bank in Cincinnati agreed to collect items at par for a bank in Philadelphia and remit every 10 days. The Cincinnati bank failed, and the Philadelphia bank filed a bill of complaint seeking to charge its receiver as trustee of the proceeds of sundry collections. The items were divided into two classes. The first included the items which had not been collected when the Cincinnati bank failed; the second included the items which had been collected before it failed. It was held that the plaintiff was entitled to recover on account of the first class, because until a collection was made the relation between the Philadelphia bank and the Cincinnati bank was that of principal and agent. It was held, however, that it could not recover on account of the second class, because the relation of

principal and agent ceased as soon as the collection was made, and the relation of creditor and debtor supervened. Affirming the decision of the Circuit Court, which had held there could be no recovery of the second class on the theory that the amounts collected could not be traced, the Supreme Court said:

“We think, however, a more satisfactory reason is found in the fact that, by the terms of the arrangement between the plaintiff and the Fidelity, the relation of debtor and creditor was created when the collections were fully made. The agreement was to collect at par, and remit the first, eleventh, and twenty-first of each month. Collections intermediate those dates were, by the custom of banks and the evident understanding of the parties, to be mingled with the general funds of the Fidelity, and used in its business. The fact that the intervals between the dates for remitting were brief is immaterial. The principle is the same as if the Fidelity was to remit only once every six months. It was the contemplation of the parties, and must be so adjudged according to the ordinary custom of banking, that these collections were not to be placed on special deposit and held until the day for remitting.

* * * * *

Bearing in mind the custom of banks, it cannot be that the parties understood that the collections made by the Fidelity, during the intervals between the days of remitting, were to be made special deposits, but on the contrary, it is clear that they intended that the moneys thus received should pass into the general funds of the bank, and be used by it as other funds, and that when the day for remitting came, the remittance should be made out of such general funds.”

The principle of the above case was reaffirmed in *Evansville Bank vs. German-American Bank*, 155 U.

S., 556. It was applied in *First Nat. Bank vs. Wilmington Ry.* (C. C. A. 4th Circ.), 77 Fed., 401, and *Richardson vs. Louisville Banking Co.* (C. C. A. 5th Circ.), 94 Fed., 442.

The fact that in the Commercial Bank Case the agreement was that remittances should be made at stated intervals—every 10 days—while in the present case the implied agreement was to remit as soon as the collection was made, does not differentiate the two cases. Unless there is a special direction that the proceeds of a collection shall not be commingled with the bank's funds, but shall be held as a special deposit and remitted in specie, the collecting bank will, under the custom of banks, be merely a debtor for the amount of the collection. *Hallam vs. Tillinghast, supra.* It is the commingling of the money collected with the bank's funds that causes that result, and it is immaterial whether the commingling was for a few hours or a few days. It was remarked in the Commercial Bank Case that it was immaterial that the remittances for the collections were to be made at such short intervals. However, an attempt to distinguish that case because of the agreement that the remittances were to be made at stated intervals was made in *First Nat'l Bank vs. Davis* (N. C.), 19 S. E., 280, where the agreement was that the remittances were to be made immediately. Holding the attempt to distinguish futile it was said:

“It is true that, in the cases cited above, the contracts provided that the collecting bank should remit, not daily or on the day of collection, but

at stated periods. But we do not think that the difference in the terms of the contracts can make the principles fixed by those high authorities inapplicable here. The test is, did the plaintiff bank agree, expressly or impliedly, that the proceeds of drafts, checks, etc., sent by it to its collecting agent, the Bank of New Hanover, should not be held by the latter as a special deposit, but merely mingled with the other funds coming in and used in the daily intricate payments and collections of its usual business? Such an understanding or agreement does not appear to us at all inconsistent with the expressed stipulation that remittances should be made each day. This stipulation only required that that should be done each day which, under the contracts under consideration in the cases cited above, was to be done, not daily, but at longer intervals. The important point is not, as we have said, where or how often the remittances were to be made, but whether it was understood that the collecting bank could and would transact the business as it did, treating the checks, drafts, etc., sent it as its own in its daily transactions, keeping memoranda or book entries to show how much was due to the plaintiff and to other banks for whom it was doing like services, and then, at a convenient hour and in some convenient way, transferring to the plaintiff bank the money due to it. The manner of keeping the account was immaterial—a mere matter of bookkeeping. If, under the contract, it was not wrongful for the Bank of New Hanover to use money coming to it from the collection of plaintiff's drafts, checks, etc., as its own, and remit other money, or other checks and drafts, to the plaintiff therefor, then it must be that there was no breach of trust or unlawful conversion in the conduct of the officers of the Bank of New Hanover in the conduct of this business for plaintiff. It seems to us plain that both banks must have clearly understood that

the relation of principal and agent as to any particular check or draft sent for collection ceased just as soon as cash or its equivalent was received by the collecting bank, and that immediately there was substituted for that relation, as to that cash, the relation of debtor and creditor."

At any rate, the decisions of the Supreme Court of Washington bearing upon this subject ought to be followed, especially when there is no conflict between them and the decisions of the Supreme Court of the United States. The Trust Company and Central Bank are both Washington corporations, and plaintiff is domiciled and engaged in business in Washington. All the transactions upon which the action depends occurred in Washington. This Court has undeviatingly held that where a cause of action wholly arose within a given state, and the matters involved were of merely local concern, the applicable decisions of the courts of that state ought to be followed. *Old Colony Trust Co. vs. Tacoma*, 230 Fed., 389, *American Surety Co. vs. Bellingham Nat'l Bank*, 254 Fed., 54, *Columbia Digger Co. vs. Sparks*, 227 Fed., 880. In so holding it is in accord with the Supreme Court. *Sim vs. Edenborn*, 242 U. S., 131, *Bamberger vs. Schoolfield*, 160 U. S., 149, *Detroit vs. Osborne*, 135 U. S., 492.

Plaintiff, we assume, will endeavor to escape the effect of the cited decisions by the claim that the Central Bank was insolvent when it received and collected plaintiff's check, and that consequently it was a fraud upon plaintiff, warranting rescission of the contract between the parties and holding the Bank as a trustee

ex maleficio, for the Bank to make the collection in the manner it did.

That the Bank was insolvent will be conceded. It is evident that it could not have gone through the deflation period, meeting all the demands which would inevitably have been made upon it, without outside assistance. It will be conceded, also, that under certain circumstances the insolvency of a bank at the time it receives a deposit or undertakes a collection is cause for rescinding the contract and holding the bank as trustee. Mere insolvency, however, is not enough to have that effect. The contract cannot be rescinded unless the bank was guilty of fraud in entering into it. The right of rescission in such a case is based, by analogy, upon the right of a vendor of goods to rescind a sale he has made to a trader who is hopelessly insolvent, who knows he cannot and will not pay for the goods, and yet obtains credit for them on the strength of his apparent solvency. It follows that a contract with an insolvent bank cannot be rescinded and it be held as trustee unless it was hopelessly and irretrievably insolvent, and was known by its managing officers to be so, as the result of which they knew when the contract was entered into that the bank could not and would not pay the money which was the subject of the contract. *St. Louis, etc. Ry. vs. Johnston*, 133 U. S., 566. In *Craigie vs. Hadley*, 99 N. Y., 131, a leading case upon this subject, the suit was to recover a deposit made on the 13th of a given month. It was said:

“The bank was not only irretrievably insolvent, but it had apparently given up the struggle to maintain its credit before the deposit was made. Its drafts had gone to protest on the 12th, and it was manifest that a condition of open insolvency must immediately ensue. The acceptance of the deposit under those circumstances constituted such a fraud as entitled the plaintiffs to reclaim the drafts or their proceeds.”

The bank's officers having knowledge, as they of course did, that it must close its doors in a few hours, it was held the contract could be rescinded and the amount of the deposit recovered.

In *Raynor vs. Scandinavian-Am. Bank*, 22 Wash. Dec., 46, deposits were made in the defendant bank on the same day that the bank commissioner (examiner) closed its doors. The Court held that as “the evidence conclusively shows that the bank receiving the checks as a deposit was hopelessly and irretrievably insolvent at that time, and was then known to be so by its managing officers,” the bank was guilty of fraud in receiving the deposits which warranted rescission and recovery of the deposits.

In *Furber vs. Dane* (Mass.), 90 N. E., 859, in speaking of known insolvency as a fraud it was said:

“The effect of this fraud is to make the bank a trustee *ex maleficio*. But the depositor must show that a real fraud has been practiced upon him, and to do this he must show affirmatively both that the bank was actually insolvent when it received his deposit and that its managing officers then knew this to be the fact.”

Actual fraud, then, is the touchstone of the right

to rescind, and guilty intent is the touchstone of actual fraud. Good faith is destructive of both, and there can be no rescission if the managing officers of a bank in good faith believed, at the time it entered into a business engagement, that it would be able to respond thereto. The bank may be insolvent, its managing officers may know that it is so, may know that it is in a serious condition, may know that any untoward occurrence or the disappointment of hopes for succor which they entertain will cause it to close its doors, yet if they in good faith believe that it will be able to surmount its difficulties they are justified in keeping its doors open and making the every day engagements of the banking business. If their belief or hope proves unfounded, and the bank is forced to close, persons dealing with it cannot claim a fraud was perpetrated, and hold the bank or its liquidator as trustee.

“If the president and officers of the bank knew or believed that the bank was hopelessly and irretrievably insolvent at the time of receiving the deposit of the complainant, then a fraud was undoubtedly committed by the bank upon the complainant, for which there should be a remedy. But fraud must be proved, and is not to be presumed, and the burden of proof is on the complainant. The mere fact that the bank was in an embarrassed condition, by reason of the large indebtedness to it from its president, is not sufficient of itself to establish the fraud alleged in this case. A trader, whether a corporation or an individual, may be struggling in the straits of financial embarrassment, but with an honest hope of weathering the financial storm and of being eventually solvent. Property received by such an individual or concern in the ordinary course of business dur-

ing the period of such embarrassment becomes honestly theirs, and the fact that their expectations were unrealized, and their hopes not well founded, would not fasten upon them a fraud that would vitiate their business transactions.”

Quin vs. Earle, 95 Fed., 728, 732.

“However, the mere fact that the bank is known to be insolvent at the time the deposit is received is not in our opinion sufficient of itself, without more, to confer this right of rescission upon the depositor, and such right of rescission would not arise when the bank at the time of receiving the deposit, although embarrassed and insolvent, yet had reason to believe that by continuing in business it might retrieve its fortunes; the necessary condition upon which the right of rescission is predicated being that the deposit was received when the bank was hopelessly embarrassed and so circumstanced as to constitute its receipt of the deposit a fraud upon the depositor. See *St. Louis Ry. Co. vs. Johnston*, *supra*, at pages 576, 577.

In the present case it merely appears that the bank was insolvent at the time this deposit was received, and had been known to be insolvent for ten years previously by the cashier who received the deposit. The extent of its insolvency at that time is not shown, nor is there any evidence as to what subsequent events precipitated the condition which caused its doors to close, or whether or not at the time the deposit was received the bank, although embarrassed and insolvent, yet had reasonable hopes that by continuing in business it might retrieve its fortunes, just as it had previously continued in business for the ten preceding years during which it had been insolvent.”

Brennan vs. Tillinghast, 201 Fed., 609, 615.

“The mere fact of insolvency at the time the deposit was received is not sufficient to justify a finding of fraud, but the insolvency must be of

such a character that it was manifestly impossible for the bankers to continue in business and meet their obligations; and that fact must have been known to the bankers, so as to justify the conclusion that the bankers accepted the depositor's money knowing that they would not and could not respond when the depositor demanded it. It is fraud that must be proved. An honest mistake as to the condition of the bank and an honest belief in the solvency of the institution, if it exists, negative the conclusion of the fraud upon which the plaintiff's cause of action must depend."

Williams vs. Van Norden Trust Co., 93 N. Y. Supp., 821, 823.

In a case in which a closely allied question was involved, the Supreme Court has dealt with the effect of actual insolvency upon ordinary banking transactions in the absence of proof of knowledge and intent on the part of the bank's officers. The receiver of an insolvent national bank sought to avoid certain payments and remittances made by it within a few days before its doors were closed, proceeding on the theory that these were transfers in contemplation of insolvency, and so forbidden by §5242, Rev. Stat. There was no question of the insolvency of the bank at the time, and it was insisted that this insolvency must have been known to its officers, and that therefore they intended a preference. Holding otherwise, the Court said:

"It is a matter of common knowledge that banks and other corporations continue, in many instances, to do their regular and ordinary business for long periods, though in a condition of actual insolvency, as disclosed by subsequent events. It cannot surely be said that all payments made in

the due course of business in such cases are to be deemed to be made in contemplation of insolvency, or with a view to prefer one creditor to another. There is often the hope that, if only the credit of the bank can be kept up by continuing its ordinary business, and by avoiding any act of insolvency, affairs may take a favorable turn, and thus suspension of payments and of business be avoided.

* * * And the evidence fails to disclose any intention or expectation on the part of its officers to presently suspend business. It rather shows that, up to the last, the operations of the bank and its transactions with the Chemical National Bank were conducted in the usual manner. It may be that those of its officers who knew its real condition must have dreaded an ultimate catastrophe, but there is nothing to justify the inference that the particular payments in question were made in contemplation of insolvency, or with a view to prefer the defendant bank."

McDonald vs. Chemical Nat'l Bank, 174 U. S., 610, 618.

For other cases holding there could be no rescission although the managing officers knew the bank to be insolvent, but did not believe it to be hopelessly and irretrievably so, see *Terhune vs. Bank*, 34 N. J. Eq., 367, *Perth Amboy Gas Co. vs. Middlesex County Bank* (N. J.), 45 Atl., 704, *New York Brew. Co. vs. Higgins*, 29 N. Y. Supp., 416, *Stapleton vs. Odell*, 47 N. Y. Supp., 13, *Goshorn vs. Murray*, 197 Fed., 407 (affirmed on this point but reversed on another in 210 Fed., 880).

Under the doctrine of the above cases, it cannot be reasonably contended that the Central Bank was guilty of fraud in undertaking the collection of plaintiff's

check and handling the collection in the customary manner. The manner in which the Bank became insolvent, and the circumstances under which it suspended payment, dispel any notion that its officers then knew it to be hopelessly insolvent, and that it would be unable to pay plaintiff the money collected. On the contrary, the circumstances show that the officers of the Bank did not believe its case to be hopeless until almost the moment that its doors were closed. Here was the manner in which it came to grief: Yakima is a purely agricultural country, and the record shows that the Bank's loans were wholly to agriculturists or to persons whose business was dependent on them. The deflation period caused a contraction of money and shrinkage of bank deposits. The deposits of the Bank declined from \$665,753 in November, 1920, to \$426,151 on 25th January, 1921. The \$240,000 which it was thus obliged to pay out had to be obtained by the Bank from some source. When it endeavored to collect the money from its borrowers it found them unable or unwilling to pay. The same influences which had caused deposits to shrink had caused people to stop buying, so far as possible, and prices to fall. The agriculturists of the Yakima country were either unable to find a market for their produce, or could only dispose of it for ruinous prices. In the majority of cases the Bank was unable to enforce payment, and in cases where it could enforcement would have meant ruin to the borrower. Drastic measures would probably react on the Bank, for the rumor would go abroad that it must be in straits,

else it would not deal so harshly with its customers, and a run on it might result. In any event it was indisposed to bring too much pressure to bear, for its officers, like all other Yakima bankers and business men, shared in the optimism of the producer, and believed that in 60 or 90 days conditions would improve and produce could be moved at a fair price. All these things appear from the Buckholtz letters, of which more will be said hereafter, and which clearly reflect conditions as they were in January.

But in the meantime, as subsequent events show, the Central Bank was slowly bleeding to death. To keep up its credit it was necessary that it should make some loans, there was a steady, if gradual, withdrawal of deposits, and the banking act required it to maintain a cash reserve of 15% of its total deposits. The collections it could make without resorting to unduly harsh measures were insufficient to enable it to meet these demands, so it sought assistance from the Trust Company. Unfortunately, however, the Bank's officers had permitted it to become overloaded with an undesirable class of paper, some of which was uncollectible, and a large part of which was non-liquid, *i. e.*, not capable of being realized on in the desired banking period of 60 to 90 days. As a result, after the Central Bank was in the debt of the Trust Company to the amount of \$185,000 to \$190,000, and needed still more money to carry it to the improved conditions which the Yakima people were certain was right around the corner, it had nothing to offer except "good but slow" paper, *i. e.*, paper which would not be paid before the

1921 crops were marketed. The Trust Company was exceedingly reluctant to make further advances on such security, but, as we have seen from Triplett's letter of the 24th heretofore referred to, it did agree to make an additional advance of \$30,000 on "good but slow" paper. However, the presentation of the \$51,000 draft, payment of which would have meant an overdraft of \$27,000 with no arrangements for covering it, prevented anything being done with this offer. It was the dishonoring of that draft on the 26th that made the Bank's case hopeless, but even then neither the Bank's officers nor the State bank examiner believed it would be forced to suspend payment. They thought its assets good, albeit slow of collection, and that the other Yakima banks would rather take over slow paper, on which they would not ultimately lose anything, than to permit a bank to close in their midst, with the unsettling of their own credit that would result. It was not until after the Yakima bankers, gathered together in conference upon the situation, had declared much of the Bank's paper worthless, and that no reasonable amount would save the Bank, that its officers and the bank examiner appreciated there was no hope for it. Doubtless the Bank's officers ought to have known the worthless character of much of its paper as well as the other Yakima bankers did after they saw it, but the important fact is that they did not. And it is their ignorance of the true situation that relieves the Bank from the imputation of fraud in the transaction complained of.

Developing the evidence against the fraud theory

step by step, it is first to be remarked that Washington has a complete banking code, and that the State is given plenary power over the supervision and regulation of State banks. The bank commissioner (examiner) is required to visit each bank at least once in a year, and oftener if he thinks necessary, for the purpose of making a full investigation of its condition. Whenever he finds a bank in an unsound condition or doing business in an unsafe manner he is required to close its doors, take possession of its assets, and wind up its affairs, the courts being deprived of jurisdiction to appoint receivers or in any other way interfere with the examiner's control thereover. Session Laws 1917, pp. 272-3, 300-5, Remington's Comp. Statutes 1922, §§3214, 3266-80. An examination was made of the Central Bank in June, 1920. While the examiner disapproved of some of the methods of Ellis, cashier and manager of the Bank, he entertained no doubt of the Bank's solvency, for his suggestions as to its methods were merely in the way of recommendations, which the Bank was at liberty to accept or disregard, as it pleased. In December, only about a month before the Bank's doors were closed, the examiner did request Barghoorn, the Bank's president, to remove Ellis and put another man in his place. Even then the examiner did not regard the situation as exigent, and was satisfied with Barghoorn's promise that the change would be made as soon as a suitable man to succeed Ellis could be found, and the change could be made without causing trouble. (Trans., 62-65.) Owing to rumors relative to the

Bank's condition which had reached the examiner, he went to Yakima to make another examination of it in January, reaching there the morning of the 26th. Before he went he had been informed of the outstanding draft for \$51,000, and understood that the Trust Company would not pay it. Knowing this, when he looked over the Bank's balance sheet on the morning of the 26th he saw that the situation was grave, and that immediate steps would need be taken to raise the money to meet the draft. He therefore went to the other Yakima banks to get assistance from them. Representatives from those banks spent the day and night of the 26th, and well into the forenoon of the 27th, in going over the paper owned by the Central Bank, and it was owing to the discouraging view taken by them of its paper that he finally concluded its doors must be closed. Yet he testified that when he began the examination on the morning of the 26th he saw no reason for taking over the institution, and it was only the opinion expressed by the representatives of the other Yakima banks of the quality of its paper that caused him to take that action. He said, however, that he believed that with the amount of assistance suggested (from \$75,000 to \$100,000), the trouble could have been tided over and the bank have survived, and that in his opinion subsequent developments had shown his belief to be justified. (Trans., 63-64.)

Turning to the officers of the Central Bank, those who directed its affairs, and so were responsible for its continuance in business and the engagement into which it entered with plaintiff, were Barghoorn, its

president, and Ellis, its cashier and, by reason of Barghoorn's non-residence, actual manager. There were a vice president and directors, but they were never mentioned in connection with the Bank's operations, and the evidence shows them to have been merely titular officers, who knew nothing of and had nothing to do with the Bank's affairs. (Trans., 67.) Now, the Bank's failure was caused by a withdrawal of deposits, falling markets and consequent inability to make collections, and an overload of non-liquid and bad paper. The last factor was the one that caused the final crash, for there is no doubt that if the Bank's paper had been liquid, or even good, albeit slow, it would have had no difficulty in obtaining enough assistance from the Trust Company or other banks to keep going. Barghoorn and Ellis knew, of course, of the withdrawal of deposits, the difficulty in making collections, and the consequent embarrassment of the Bank for ready money, but it is evident they did not know of the doubtful quality of the paper it held until the very last; not, indeed, until the other Yakima bankers sat in judgment on it on the 26th and 27th, and condemned much of it as utterly bad. As a result of this ignorance they did not think the Bank was in any danger. They confidently expected conditions would become better; that withdrawal of deposits would cease, markets improve, and collections be easier. But if those things failed them, they entertained no doubt of being able to obtain all the money necessary by borrowing upon collateral or rediscounting notes, for they had no doubt of the quality of the paper they had to offer

for those purposes.

We first take up Ellis, because he was the man on the ground, the man upon whom the chief responsibility rested, for Barghoorn did not live in Yakima and was seldom there. Ellis became an officer of the Central Bank in February, 1920, less than a year before it suspended. He soon incurred the criticism of the State banking department. After the June examination the examiner formed the opinion that Ellis was too optimistic, was not informed concerning the Bank's loans, and that his system of keeping accounts was slovenly. He was inclined to excuse Ellis to some extent because of the short time Ellis had been with the Bank, but wrote Barghoorn calling attention to some of Ellis' shortcomings. In December, about a month before the Bank closed, the examiner again wrote Barghoorn, this time requesting that Ellis be removed. About the same time the examiner chanced to see Barghoorn personally in Yakima, and went over the grounds of complaint against Ellis. These were that Ellis was an optimist; that he overestimated the resources of the Bank; that he did not take sufficient account of falling prices; and that he was disposed to expand rather than contract. In view of falling prices and continued deflation, the examiner thought "a man of far sterner stuff" than Ellis was needed in charge of the Bank. (Trans., 62-65.) Barghoorn expressed a willingness to comply with the examiner's request, but said it would be necessary to clean house gradually; that because of Ellis' wife and children he was loath to discharge Ellis; but that he

was endeavoring to get hold of a suitable man to take charge of the Bank, and as soon as he could do so would put him in Ellis' place. (Trans., 63.) As will be shown under a subsequent head, it was in pursuance of this request from the examiner that Barghoorn soon after employed Buckholtz and sent him to Yakima, intending that he should ultimately take Ellis' place.

Ellis, testifying for plaintiff, said that he knew of the examiner's criticism. While denying, naturally, that he was in any way at fault, he admitted that the criticism of his ignorance of the Bank's loans was justified. He excused his want of knowledge by the fact that he had been with the Bank but a short time, saying that it was utterly impossible for him to familiarize himself with the character of its paper in so short a time. (Trans., 95, 97.)

A strong sidelight is cast upon Ellis' disposition by Buckholtz' letters to the officers of the Trust Company. In a number of incidents Ellis' unquenchable optimism and easy going nature appear. A sale of the Central Bank was in prospect, which would apparently have solved the Bank's financial problems, and Ellis was at all times entirely confident it would go through. (Trans., 148.) Ellis saw advancing prices, good crop movements, and abundant money for the Bank's needs coming in. In trying to arrive at the true situation Buckholtz heavily discounted his figures and took all his estimates with a large allowance of salt. (Trans., 223.) Ellis was inept in the enforcement of collec-

tions. Borrowers whose notes were overdue would receive considerable sums, and notwithstanding the need of the Bank for money Ellis would permit them to renew their notes and use their money elsewhere. That sort of thing became so flagrant that Buckholtz finally took Ellis to task, and strongly intimated that in the future Ellis must not meddle with such matters, but leave them to Buckholtz. (Trans., 184-191.) The letters, in short, show Ellis in the same light that the testimony of the bank examiner shows him, and prove that because of his optimism and easy going nature he did not sense the situation, and had no idea that the Bank was insolvent or in any way embarrassed. The examiner, the administrative officer whom the State had charged with control over the Bank, said that Ellis was incompetent but not dishonest. (Trans., 62.) The courts ought not, on mere suspicion, to override that official's judgment.

Next of Barghoorn. He lived in Spokane, had many other business interests besides his interest in the Central Bank, and was seldom in Yakima. He became a shareholder in the Bank in May, 1919, and its president in January, 1920. Where, as here, a bank's failure is not due to the dishonesty of its officers, but to its inability to realize upon its loans as need arose, knowledge of its insolvency cannot be charged to a particular officer unless he is shown to have known of the character of the loans. In the nature of things, Barghoorn, who had never lived in Yakima, who had been connected with the Central Bank but a short time, and who was not in charge

of its daily operations where he might more quickly have obtained information concerning its borrowers, could have no discriminating opinion of its loans. Of necessity he would have to rely largely, if not wholly, upon the opinions of others. The testimony permits no doubt that Barghoorn believed the loans of the Central Bank to be of a high character, and that, while the Bank was temporarily embarrassed by a shortage of cash, there could be no doubt of its solvency if the temporary trouble was overcome. The bank examiner, who went from Spokane to Yakima with Barghoorn on the night of the 25th, after it was known that the Trust Company would refuse to pay the \$51,000 draft, said that from his conversation at that time with Barghoorn he believed Barghoorn "had no suspicion whatever that the bank was going to have to close; that while he was cognizant of the danger of a cash shortage, he didn't question the worth of his assets." (Trans., 64.) At another place in his testimony he said of Barghoorn that "his attitude was more that of fearing a collapse of the credit of the bank and an apprehension over being able to provide cash for the situation, rather than a fear of the intrinsic worth of his assets." (Trans., 65-66.) If such was Barghoorn's point of view on the 25th, two days before the Bank closed, and after he knew that the Trust Company would not pay the \$51,000 draft, it is beyond belief that on the 21st, when everything was moving smoothly, he believed the Bank to be insolvent, to say nothing of being hopelessly and irretrievably so.

In speaking of Barghoorn, it must be kept in mind that on the 21st he could have had no inkling of trouble in securing continued assistance from the Trust Company. He was a director of the Trust Company from 1908 until the 11th January, 1921, when he retired of his own volition. (Trans., 49, 122.) His relations with its officers, naturally, were very friendly. It had been exceedingly liberal in its financial aid to the Bank, and it was not to be supposed that it would discontinue that aid so long as the Bank had good paper to offer for security or rediscount. Inasmuch as Barghoorn entertained no suspicion of the good quality of the Bank's paper, it is apparent that on the 21st he expected an uninterrupted continuance of such financial aid from the Trust Company as might be necessary. And it is his expectation or hope on the 21st, the day plaintiff's check was collected, which is determinative of whether there was fraud in the transaction.

Perhaps the most convincing evidence that no one connected with the Central Bank thought it hopelessly insolvent are Buckholtz' letters to the officers of the Trust Company. They have no direct bearing upon the question of whether the Bank was guilty of fraud in that, being hopelessly insolvent, it received and collected plaintiff's check, for Buckholtz was not an officer of the Bank and had no voice in whether it should close or remain open, in whether the collection should be undertaken or refused. His individual opinion concerning its solvency would therefore have no more effect upon the direct question of its fraud

than would the opinion of any mere clerk in the Bank. Moreover, he had been with the Bank less than a month, and his opinion concerning the worth of its assets, and consequently of its solvency, would not have much weight. He was in a position, however, to sense the feeling of the officers of the Bank concerning its condition. He was there to succeed Ellis ultimately, and in the meantime to assist Ellis in conducting the Bank through the deflation period. He saw all that was going on, and if the Bank's officers were apprehensive of its solvency he would have known it. His letters may therefore be said to afford a peep behind the scenes and to disclose what went on in the Bank during the last month of its existence. They are more satisfactory than any after-the-event testimony would be, for no doubt can be entertained of their sincerity, and that they honestly reflected conditions as he saw them. He had long been an employe of the Trust Company, and was very friendly to its officers. It was upon their recommendation that he had been given the opportunity at Yakima, whereby, if things had gone well, he would have succeeded Ellis as virtual head of the Central Bank. While his letters show him entirely faithful to his new employer, they also prove him loyal to his old employer in all the things of which he wrote. There was no inconsistency in his attitude, for it is evident that Barghoorn did not desire to overreach the Trust Company, or to obtain support from it to which the Central Bank was not properly entitled. From the first, then, the letters show Buckholtz endeavoring to

put matters before the Trust Company fairly. In offering paper for rediscount, he stated its good points, but did not endeavor to conceal disadvantageous features. In speaking of the present and forecasting the future, he wrote freely of conditions about Yakima and in the Central Bank. He told of falling prices, scarcity of money, the difficulty in making collections and keeping up the Bank's cash reserve. Reading the letters in their entirety, no doubt is left in the reader's mind that Buckholtz never, until after the Bank closed its doors, believed it to be hopelessly insolvent, but on the contrary thought that the only difficulty it had to contend with was in keeping up its cash reserve for 60 or 90 days, when, according to the prognostications of all the Yakima wisecracks, bankers and others, crops would begin to move and money and collections be easier. There are too many of these letters to permit of reference to them at length, but we refer briefly to some of them, these extracts being typical of the vein that runs through them all.

It should be premised that it appears from this correspondence that negotiations for a sale of the Central Bank were pending all through the month of January; a sale, it would seem, that would relieve the Bank's (supposedly) temporary cash shortage, and that all concerned in its affairs considered the sale as an alternative relief in the event that business conditions did not improve.

Under date of 9th January, Buckholtz, writing to

Mr. Rutter, president of the Trust Company, said that he was confident "that we can get by and liquidate our indebtedness within 90 days, provided of course that the products held here will sell at all at reasonable figures." Failure to move the products he thought was "not so much a matter of holding for better markets but a matter of light demand temporarily." The matter of making a sale, and Ellis' firm conviction that it would go through, were referred to. The writer said, however, that he was not depending on that in making his forecast, but on the liquidation which he thought would be possible without bringing so much pressure to bear as to do the Bank injury. (Trans., 148.)

Under date of the 17th, in a letter to Triplett, Buckholtz spoke of the marketing difficulties produce growers were having, and the belief of other banks that produce would shortly move and relieve conditions. He said that he was going to keep pounding along, but that "I don't expect to do any great volume of liquidating until February or March. I am figuring on from \$100,000 to \$150,000 out of hops and apples during the next 90 days. If these two items don't move, we are going to have some mighty hard sledding and it won't be this bank alone." In the same letter he said that deposits were holding up well, and that they expected to get a \$50,000 deposit of county funds the last of February or first of March. (Trans., 179, 181.)

Writing Triplett on the 19th, Buckholtz acknowl-

edged the justice of Triplett's criticism, made some days before, respecting the Central Bank's way of handling rediscounts, but said that "no doubt for some weeks it will remain a question of which is preferable to you—overdrafts or past due rediscounts." He proposed a \$20,000 increase in rediscounts if the Trust Company would take "stuff that will not be paid until 1921 crop returns are in." (Trans., 198.)

On the 21st he wrote that he had talked with other Yakima bankers, that they also were carrying a heavy burden, but that they were all "more or less confident of a good washing out of stuff during the next 90 days" through miscellaneous crop movement. This, he said, was the only chance "to liquidate our borrowed money down to a reasonable amount and maintain a cash reserve." He closed in a semi-jocose vein by likening the Central Bank to a man at the point of death, but with a hopeful doctor on the job who was able to discern signs of improvement, "and speaking to the patient's wife and children, you would say that he had good chances for complete recovery." (Trans., 219-221.) That he did not intend the comparison to be taken too seriously is evidenced by the fact that two days later, on the 23d, he sent Mr. Rutter a "list of loans which I think can be collected in full during next 90 days aggregating \$147,941." This amount, it was stated, did not include "partial reductions on those which cannot be collected in full." From the partial payments he expected an additional \$50,000. Ellis' figures, he said, were much more optimistic, but "I have taken con-

siderable salt with his estimates," and the figures given he considered to be conservative. (Trans., 222-223.) And that it was not taken by Triplett to indicate that Buckholtz believed the Central Bank to be in a desperate or even serious condition is proven by the nature of Triplett's reply, written on the 24th, wherein he says that "The patient's friends and family are glad to hear that he is better; that he is no worse, and that he shows good prospects for improvement in the near future." He goes on to say that "this is extremely gratifying," but that the doctor must stay on the job night and day and be prepared for any relapse that may come, at the same time expressing, in the language quoted under the preceding head, the willingness of the Trust Company to stand back of the Central Bank to any reasonable extent if the Bank would furnish the Trust Company a class of paper on which it would not ultimately have to take a loss. (Trans., 224-226.)

In a second and longer letter written to Mr. Rutter on the 23d, evidently intended to give him a full and accurate view of the situation as it appeared to Buckholtz, he began by saying that "The last three days, I have felt very discouraged with the way things are going," and then stated the discouraging factors in detail, among them being the \$51,000 draft, of which he spoke as follows:

"Yesterday, we mailed a \$51,000.00 draft on you to the Seattle National Bank covering a large letter of items on other local banks, the net of which has been remitted to you and no doubt we will have a few dollars there to meet it. The

draft will likely reach you Tuesday or Wednesday and if you pay it the overdraft created will be the limit to date of credit advanced this institution. Have Mr. Triplett ascertain the amount of the overdraft created if this draft is paid. If you do not pay it, we are gone."

On the other hand, in the same letter, he said that "business men and bankers here are confident of a good movement (of farm products) during February and March," and that if this occurred "I feel justified in making the statement that I am still confident of cutting down our borrowed money to a nominal amount if not entirely during the next 90 days." Even should the expected crop movement and liquidation fail to occur, and it became necessary for the Trust Company to carry an additional \$50,000 of slow paper "which will reach an enormous sum by that time, * * * I believe the possibilities of the institution for future business and earning power to charge off bad paper is here. A bank is needed in this location and a good volume of business is assured, and with close and proper management, there is no doubt in my mind but what the indebtedness carried by the Spokane & Eastern Trust Co. can eventually be worked out and kept within reasonable bounds and worked into a valuable account." Information was asked as to "whether or not you will back the institution and myself any further in case of necessity," and the letter closed with a postscript in which the opinion was expressed that if the Trust Company would advance such additional requirements as might be necessary, which could hardly exceed \$50,000 more

at the worst, it would get its money back much more quickly than by letting the Central Bank be closed. (Trans., 227-232.) On the next day, the 24th, in a letter to Triplett the Rutter letter was referred to, and Buckholtz said that "I cannot figure out any chance of keeping the balance in our favor outside of the methods outlined therein." He also said: "Wish you would write me frankly on how the S. & E. feels about things here and whether we can expect you to honor our drafts if the overdraft should go up to \$25,000 or a little more, say for ten days or so, and see if something doesn't develop by then." (Trans., 232-234.)

These letters are sincere. They bear upon their face the indicia of honesty. They were written when there was no motive for coloring them or making of them anything but a frank expression of the writer's views and beliefs. And they strip of all pretense to reasonable consideration any claim that on the 21st, the day the Central Bank received and collected plaintiff's check, any one connected with it knew that it was hopelessly insolvent, and that therefore plaintiff would not receive the money collected. The question, be it remarked, is not of what the officers of the Bank might have known, or ought to have known in the exercise of reasonable prudence. It is not a question of incompetence or of negligence but of actual, intended fraud. Only proof of designed fraud; proof that the officers did know, not that they might have known, when they undertook to collect and made the collection, that the Bank was hopelessly insolvent and

that plaintiff would never get the money, will suffice to sustain plaintiff's case. These letters give the lie to the claim that there was knowledge or even apprehension of such a condition. They show Ellis, the man in charge of the Bank's affairs, to have been just such a man as the testimony of the State examiner painted him: illy acquainted with the true character of the Bank's loans, optimistic, inappreciative of the seriousness of the financial crisis through which the country was passing, and without any thought of impending danger. They show Buckholtz, in an endeavor not to be misled by Ellis' optimism, going, as he thought, to the opposite extreme. The Bank had three resources, he considered, to help it through the critical period. The first was the proposed sale. Ellis relied upon this confidently, but Buckholtz put it aside as too uncertain a factor to be depended on. The next was the crop movement in February and March, which all the Yakima bankers and business men expected to occur. If neither of the first two eventuated, then the Bank would have to rely upon the Trust Company to make further advances. No doubt was expressed that the Bank had plenty of good paper to furnish adequate security for such advances; the trouble with it was that it was slow (that is, if the 1920 crop did not move in February or March), and returns could not be expected on it until the 1921 crop. As Buckholtz explained in his testimony, when he spoke disparagingly of the paper it would be necessary to offer for further advances, he did not refer to its ultimate collectibility

but to its want of liquidity; to the inability to realize upon it quickly. (Trans., 128.) It was not until his letters of the 23d and 24th that he expressed any apprehension of danger, and then it was not concerning the ultimate ability of the Bank to pay its debts, but only of its ability to keep up its cash reserve until things took a turn for the better. It must be borne in mind that when those letters were written he had not received Triplett's letter of the 24th, in which it was said that if no deal could be made with "Herb" for releasing the \$30,000 Liberty bonds for sale and taking paper in their stead, the Trust Company would take over the debt, if secured by "good but slow" paper, and thus release the bonds for sale. He was, therefore, solicitous to know whether or not the Trust Company "will back the institution and myself any further in case of necessity." It is plain that he hoped, indeed, expected, that it would do so, for he set forth the bright future of the Central Bank if it surmounted the temporary cash reserve difficulty, and the value of its account to the Trust Company. It may be admitted that he was mistaken about the value of the assets of the Bank and the amount that would be required to tide it over, but that is neither here nor there. It is the honest hope or expectation that counts; not the well or ill founded character of the hope or expectation. Banks "may be struggling in the straits of financial embarrassment, but with an honest hope of weathering the storm and of being eventually solvent," and under such conditions "Property received by (them) in the ordinary course of business becomes

honestly theirs." It is not enough to convict them of fraud that "their expectations were unrealized, and their hopes not well founded." *Quin vs. Earle, supra.*

In a case where the cashier of a bank had known it to be insolvent for 10 years, it was held that "the mere fact that the bank is known to be insolvent at the time when the deposit is received" is not sufficient to warrant rescission on the ground of fraud; it must also appear that it was hopelessly embarrassed and failure not only certain but imminent. If it "had reason to believe that by continuing in business it might retrieve its fortunes;" if "although embarrassed and insolvent (it), yet had reasonable hopes that by continuing in business it might retrieve its fortunes," there was no fraud, and consequently no right to hold the bank's funds as a trust fund. *Brennan vs. Tillinghast, supra.* "It is a matter of common knowledge," said the Supreme Court, "that banks * * * continue, in many instances, to do their regular and ordinary business for long periods, though in a condition of actual insolvency," there being the hope "that, if only the credit of the bank can be kept up by continuing its ordinary business, and by avoiding any act of insolvency, affairs may take a favorable turn, and thus suspension of payments and of business be avoided." The transactions of a bank doing business under such conditions were not violative of the national banking act although "those of its officers who knew its real condition must have dreaded an ultimate catastrophe," if it did not appear that they intended or expected, at the time of a particular transaction,

“to presently suspend business.” *McDonald vs. Chemical Nat'l Bank, supra.* The thing to be ascertained, then, is what the officers of the Central Bank honestly expected or hoped concerning its fate on the 21st, the day the fraud was committed if committed at all. Did they then expect or hope that it would be able to surmount its present difficulties and continue business for some indefinite time; whether long or short is of no moment? Or did they know that it was doomed and must presently close its doors, so that plaintiff would not get its money? If Buckholtz' letters reflect their state of mind, there can be no question but that they expected the Bank would continue business indefinitely, for while in one of his letters written on that day he recognizes the increasing difficulty the Bank is having to maintain its cash reserve, he has various plans for dealing with it, and obviously expects no immediate trouble because of it. That two or three days later he was in a more downcast mood, and thought the Bank must close if the Trust Company would not allow the overdraft caused by the \$51,000 draft, is immaterial. Men's moods change from day to day, usually with the state of their digestion or the way they sleep. What we are concerned with here is whether on the 21st the officers of the Central Bank knew it was hopelessly insolvent and would close its doors before plaintiff received its money, or whether they expected or hoped it would remain open for some indefinite time; at least long enough for plaintiff to get its money. We repeat that if Buckholtz' letters are accepted as a reflection of

their state of mind on that day, there can be no doubt that they expected the Bank to remain open for some indefinite time.

It was testified that after the Central Bank closed its doors Buckholtz expressed the opinion that it would not pay more than 30% of its indebtedness. His individual opinion is a matter of no moment, for, as heretofore pointed out, while it was intended that he should ultimately succeed Ellis, he had been given no official position and had no more voice in determining whether the Bank should remain open than any clerk would have. At any rate, what he thought after the Bank closed its doors is no criterion of what he thought before it did so. Subsequent events usually change opinions. Here there was good cause for Buckholtz' change of opinion. In the very short time he had been with the Bank, he could form no accurate opinion of the value of the great mass of its paper. Ellis, who had been with the Bank a year, said that he was not well informed concerning many of its loans because he had not had time to become so, and the examiner excused his ignorance for the same reason. (Trans., 97, 62.) Buckholtz, who had been with the Bank but 20 days, could scarcely be expected to know all about the loans. Just before the Bank closed he got some information concerning them which evidently its officers did not possess. When Stevens, the bank examiner, went into the Bank on the morning of the 26th, he looked at its balance sheet, and saw that immediate steps would need be taken to raise money to pay the \$51,000 draft he knew to be out-

standing. He called the Yakima bankers together, and they held a series of conferences, extending through the day and night of the 26th and the morning of the 27th. The note pouch, containing the assets of the Bank, was put before them, and they went through the paper carefully in order to determine how much value was there and how much money would need be raised to tide the Bank over. The more they looked at the paper the less they liked it, and their estimate of the amount of money needed, reasonably low at first, finally reached a point where it was evident that nothing could be done, and that the Bank must close. (Trans., 57-58.) Buckholtz attended all these conferences and followed the estimates of the Yakima bankers. After hearing their estimate of losses, and taking into consideration the Bank's deposits and the amount of paper in the pouch, he thought the Bank would probably not pay more than 30%. He did not recall expressing the opinion imputed to him, but thought it quite likely that he did so, inasmuch as it was in accordance with the idea he formed after hearing the Yakima bankers' estimate of losses on the paper. (Trans., 130-131.)

In considering whether the persons connected with the Central Bank knew it to be hopelessly and irretrievably insolvent on the 21st, and so knowing kept it open, transacting its regular business, for six days longer, it must be kept in mind that a statute of Washington provides that any officer, agent, or employe of a bank who shall accept any deposit, or consent thereto or connive thereat, when he knows or

has good reason to believe that the bank is insolvent, shall be punished by imprisonment for not more than ten years in the penitentiary, or by a fine of not more than \$10,000. 1 Remington's Comp. Statutes 1922, §2640. Of course the severity of criminal statutes does not keep men honest, and many bank officers have gone to the penitentiary because of offending against them. In all such cases, however, downright dishonesty, embezzlement or some other form of peculation, lay at the root of the crime. The guilty officers misused the funds of the bank, probably expecting to make the shortage good, but going on from bad to worse until it was impossible for them to extricate themselves. Here the honesty of the officers of the Central Bank is not questioned. No wrongdoing is or can be charged against them, save only that they kept the bank open after they knew it to be hopelessly insolvent. It is inconceivable that men of their standing, innocent of crime or any sort of wrongdoing, would without motive expose themselves to the severe penalties of the statute by keeping the bank open after they knew it to be insolvent.

Summing up, plaintiff cannot recover unless the Central Bank is held to have been a trustee *ex maleficio* of the money received from the collection of plaintiff's check. That cannot be held unless it is said that the managing officers of the Bank were guilty of actual fraud in undertaking the collection; unless it is said that they knew the Bank was hopelessly and irretrievably insolvent, and that when they received the money and sent it to the Trust Company they knew

plaintiff would not get it. The question is not of their incompetence or negligence, of what they ought to have known or might have known. The authorities agree that "It is fraud that must be proved." *Williams vs. Trust Co.*, *supra*. Now, "fraud cannot be established by mere proof of negligence or failure to perform a duty." *Spokane vs. Amsterdamsch Trustees Kantoor*, 18 Wash., 81, 89.

"Negligence and fraud are not synonymous terms; nor in legal effect are they equivalent terms. Fraud presupposes a willful purpose resorted to with intent to deprive another of his legal rights. It is positive in that the purpose concurs with the act, designedly and knowingly committed. Negligence, whatever be its grade, does not include a purpose to do a wrongful act. It may be some evidence of, but is not, fraud. *Gardner vs. Heartt*, 3 Denio, 232. Fraud always has its origin in a purpose, but negligence is an omission of duty minus the purpose. *People vs. Camp*, 66 Hun, 531, 21 N. Y. Supp. 741; *Raming vs. Metropolitan Street Ry. Co.*, 157 Mo., 477, 57 S. W., 268; *Cleveland R. R. Co. vs. Miller*, 149 Ind. 490, 49 N. E., 445. This distinction was clearly pointed out in *Kountze vs. Kennedy*, *supra*, 147 N. Y. 129, 41 N. E. 414, 29 L. R. A., 360, 49 Am. St. Rep. 651, the court saying:

'Misjudgment, however gross, or want of caution, however marked, is not fraud. Intentional fraud, as distinguished from a mere breach of duty or the omission to use due care, is an essential factor in an action for deceit.'

Reco vs. Bull (N. Y.), 124 N. E., 144.

The burden, then, is upon plaintiff to prove that when the managing officers of the Central Bank entered into their engagement with plaintiff they knew

that the Bank was hopelessly and irretrievably insolvent, must presently close its doors, and that it would not pay plaintiff the money it collected. The burden is heavier than in the ordinary case, for the sole foundation of plaintiff's case is a charge of fraud. "Fraud," said Mr. Justice Story, "is not presumed. It must at law be clearly and fully established. Suspicion is not enough. Doubtful circumstances are not enough. The balance of the testimony is not to be nicely weighed." *Sanborn vs. Stetson*, 21 Fed. Cas, 314. "Fraud," said Judge Bean in *United States vs. California Midway Oil Co.*, 259 Fed., 343, "is never presumed, but must be established by clear, unequivocal, and convincing proof. Proof which merely creates suspicion is not enough." "Where fraud is alleged it must be clearly and satisfactorily proved by him who alleges it." *Pederson vs. Ry. Co.*, 6 Wash. 202. Fraud cannot "be found upon a bare preponderance of the evidence." *German-Am. Bank vs. Illinois S. Co.*, 99 Wash., 9. The rule is that fraud must "be proved by testimony at once strong, cogent, and convincing." *Morris & Co. vs. Canadian Bank*, 95 Wash., 418. Where circumstances are relied upon to prove fraud, they are not sufficient unless they are inconsistent with honesty, and only consistent with an intent to defraud. If they are of equivocal tendency, as consistent with honesty as dishonesty, fraud is not proven. *Foster vs. McAlester*, 114 Fed. 145; *In re Hawks*, 204 Fed. 309; *United States vs. California Oil Co.*, 259 Fed., 343; *Dunlap vs. Seattle Nat'l Bank*, 93 Wash., 568; *Dart vs. McDonald*, 107

Wash., 537. There is not a scintilla of evidence tending to prove that on the 21st the managing officers of the Central Bank knew it to be hopelessly and irretrievably insolvent, and were aware that in undertaking the collection of the check they were perpetrating a fraud upon plaintiff. The Bank was insolvent, and six days later was forced to close its doors, but those facts, standing alone, do not tend to prove guilty knowledge on the part of its managing officers. They knew that the Bank was having difficulty in maintaining its cash reserve, and probably understood that if conditions did not change and it received no outside aid it might not be able to weather the storm. But they had these resources to look to: (1) The proposed sale; (2) The expected crop movement in February and March; (3) The promised deposit of \$50,000 in county funds in February; (4) The continued assistance of the Trust Company. It is of no moment that their hopes and expectations were not realized. If they honestly hoped or expected that the Bank's shortage of ready money would be relieved through these or any one of these avenues of relief, and it would be able to continue business, there was no fraud in the transaction with plaintiff. The evidence permits no doubt that on the 21st they honestly believed that the Bank was in no danger and would continue business indefinitely.

III. *Conceding the existence of a trust relation, the money collected cannot be followed as a trust fund because it was commingled with the funds of the Central Bank, and did not augment its assets.*

To recover in this case, plaintiff must do more than establish a trust relation between it and the Central Bank. It must also show that the money collected augmented the assets of the Central Bank, and can be traced and identified, separate from the funds of the Central Bank. The evidence fails to show this.

For a considerable time (the period is not definitely fixed) the Central Bank had carried an active account with the Trust Company. From day to day, practically every banking day, it would send the Trust Company drafts, checks, and other cash items, to be credited to its account. Also as it needed money it would send notes for rediscount, the amount of which, if accepted, would be credited to it. The magnitude of such transactions is shown by the fact that in October, 1920, it sent the Trust Company cash items (excluding notes or rediscounts) amounting to \$421,000; in November, \$317,000; in December, \$156,000; from the 3d to the 26th January, \$151,000; a total of over \$1,000,000 for the four months. (Trans., 142.) During January alone it had rediscounts with the Trust Company ranging from \$142,000 to over \$200,000. (Trans., 118.) The Trust Company was its principal correspondent, more than half of all the drafts it issued being drawn upon the Trust Company. (Trans., 90, 97-98.)

As has been heretofore stated, when the Central Bank received the collection items from the Seattle National Bank, it placed with them other items it held against other Yakima banks, the total exceeding \$58,000, and through the Yakima Valley Bank presented them all for clearing. From the amount received through these collections, there was deducted the amount of items presented against the Central Bank, some \$9,000, so that the Yakima Valley Bank actually received but \$49,500 from the \$58,000 in collection items. The Central Bank left \$1,500 of this amount on deposit with the Yakima Valley Bank, and sent \$48,000 to the Trust Company for credit to the Bank's general account. Before the presentation of the \$51,000 draft which the Central Bank sent to the Seattle National Bank in settlement of the collection items received from it, the Trust Company had paid out of the \$48,000 remittance a considerable number of prior drafts drawn by the Central Bank upon its general account, so that but \$24,000 remained to the credit of the Bank. When it was decided not to allow the overdraft which would have been necessary in order to pay the \$51,000 draft, this balance was applied upon a debt which the Central Bank owed the Trust Company.

It is settled law in the State of Washington that in order to recover a trust fund from an insolvent bank two things must concur; the assets of the bank must have been augmented by the receipt of the trust fund, and it must be capable of identification and segregation from the funds of the bank. In *Blake*

vs. State Savings Bank, 12 Wash., 619, 41 Pac., 909, a depositor sought to recover deposits made by him after the bank had become hopelessly insolvent, and was known by its officers to be so. It appeared that the deposits had been received, credited to him, and checked against by him, in the usual way, having thus entered into and become a part of the funds of the bank. It was held that as the "deposits became commingled with the general funds of like character in the bank the means of identification failed and the money could not be reclaimed."

It is evident that the money collected on plaintiff's check was so commingled with the general funds of the Central Bank as to lose its identity. It was put through the Yakima clearing house with all the other checks the Central Bank had for collection on the 21st, a total of over \$58,000. In collecting these checks there was deducted from their amount \$9,000 on account of checks drawn on the Central Bank and put through the clearing house on the same day. The balance of \$49,500 went to the credit of the Central Bank with the Yakima Valley Bank. The Central Bank then drew out \$48,000, put it with other funds, and sent the whole to the Trust Company for credit to the general account of the Central Bank. There it was mingled with other funds which had been, and thereafter were, transmitted for credit to the Central Bank, and was subject, and was subjected, to drafts drawn generally against the account of the Central Bank, and to charges on account of overdue rediscounted paper. There was certainly a commingling

of funds and loss of identity equal to that appearing in the Blake Case.

Heidelbach vs. Campbell, 95 Wash., 661, 164 Pac., 247, is not a bank case, but is squarely in point on the effect of commingling funds. Goods were sent to a merchant to be held by him in trust, with the privilege of sale and requirement of accounting to the owner for proceeds of sales. Some of the goods were sold, but the trustee did not keep the proceeds of the sales separate from his funds. Instead he commingled them therewith, and used them in payment of employes and other running expenses, in paying his creditors, and in the general operations of his business. It was held that the trust fund had lost its identity and could not be traced.

In the case at bar there is the same commingling as in the cited case. The Central Bank put the proceeds of the collection with its general funds, and used them in payment of its debts.

The Washington cases heretofore cited have denied the right to recover a trust fund because it was commingled with the funds of the trustee. Those hereinafter cited deny the right because there was no augmentation of the assets of the trustee. In *Rugger vs. Hammond*, 95 Wash., 85, 163 Pac., 408, the owners of bonds authorized their sale and the remittance of their proceeds to a designated bank. One of the owners instructed the bank to use his portion of the proceeds, when received, for a particular purpose. The bank did not do so, but so disposed of them that

they were lost to the owner. He sought to follow the money as a trust fund in the hands of the bank's receiver. Denying him that relief, these rules were stated by the Court: (1) In such a case, a question of title to property, not of debt, is involved, and the claimant cannot prevail unless he can trace his property into the possession of the receiver of the insolvent bank; (2) The burden of proof is upon the claimant, and "it must clearly and satisfactorily appear that his money or property sought to be recovered is actually, in its original or substituted form, in the hands of the successor of his trustee;" (3) There could not be a recovery without showing that the bank's assets were augmented by the receipt of the trust fund; (4) The fact that the money was deposited with the bank, and was mingled with its funds and used in the usual course of its banking business, was insufficient to establish an augmentation of its assets.

Next in order is *Zimmerli vs. Northern Bank*, 111 Wash., 624, 191 Pac., 788. There bonds secured by a mortgage on realty were executed to a trust company. It sold two of the bonds to plaintiff. Subsequently a purchaser of the realty paid the entire mortgage debt to the trust company, which thereupon satisfied the mortgage, but did not pay the amount of his bonds to plaintiff. The purchaser of the property and plaintiff were both depositors with the trust company, and the mortgage debt was paid by a check drawn upon the purchaser's account with the trust company. The trust company became insolvent, and

plaintiff sought to establish that the money paid in satisfaction of his bonds was a trust fund, and to recover it from the company's liquidator. It was held that there had been no augmentation of the bank's assets, and therefore there was no trust fund.

In *Spiroplos vs. Scandinavian-American Bank*, 116 Wash., 491, 199 Pac., 997, we have a case that cannot in any way be distinguished from the case at bar. On the 12th January, 1921, the plaintiff bought from the defendant bank a draft upon the National Bank of Greece. Neither the defendant nor its New York correspondent was a correspondent of the Greek bank, so to provide funds for the payment of the Greek draft, the defendant drew a draft for the same amount upon its New York correspondent in favor of the New York correspondent of the Greek bank. The money paid by the plaintiff for the Greek draft went into the defendant's general funds. Three days after the purchase of the draft, on the 15th, the bank commissioner (examiner) declared the defendant to be insolvent, and took charge of its affairs for liquidation purposes. When the draft was drawn, the defendant had a sufficient balance with its New York correspondent to pay the draft, but after it closed its doors the New York correspondent refused to pay the draft and applied the balance on claims it had against the defendant. The plaintiff thereupon sought to establish the money he paid for the draft to be a trust fund, and to recover it as such. It was held that he could not recover because there had been no

augmentation of the defendant's assets. Quoting from the opinion:

"It may be assumed that Spiroplos' money passed into the hands of the receiver in a substituted form, but the more serious question is whether it increased the net assets of the bank. The receiving of money on deposit by a bank does not ordinarily swell its assets because it creates a debt of the bank to the depositor equal to the amount of the money so received. In the *Rugger* case it was said, speaking of the money there involved:

'True this money in a sense went into the assets of the trust company, but so does all money which is deposited in a bank, since title thereto passes to the bank. It is not enough, however, for our present purpose that the money physically became a part of the trust company's assets, it must have actually swelled the net assets of the trust company and passed in some form to the hands of the receiver. Manifestly the receiving of money on deposit by a bank does not ordinarily swell its assets, for it creates a debt of the bank equal to the amount so received.'

The question then arises whether, when the bank received Spiroplos' money and issued the draft, it created an obligation on the bank equal to the amount of money so received. If it did, the rule of the cases just cited would control."

The Court then considered that question, and held that when the bank issued its draft it incurred a debt to plaintiff, and the "net assets of the bank were not augmented by the transaction."

The rule stated in the Spiroplos Case has been somewhat weakened by the opinion in the later case of *Raynor vs. Scandinavian-American Bank*, 22 Wash.

Dec., 46. The Spiroplos Case required that there should be an augmentation of the net assets of the bank. The Raynor Case held it was sufficient if the gross assets were augmented. Both are department decisions, and at the time of writing this brief the Supreme Court, sitting *en banc*, has not harmonized them. In view of that situation, we shall not remark upon either, but shall pass to the Federal decisions.

In *City Bank vs. Blackmore* (C. C. A. 6th Circ.), 75 Fed., 771 (opinion by Judge Taft), the City Bank sent a New York draft for \$5,000 to the Commercial Bank, for credit to the account of the City Bank. The Commercial Bank was then hopelessly insolvent, due to the dishonesty of its cashier and managing officer, and closed its doors three days later. Upon receipt of the draft the Commercial Bank sent it to the National Bank of the Republic, at New York, which credited the draft against a debt due it from the Commercial Bank. The City Bank sued to establish and recover the amount of the draft as a trust fund, asserting that a trust relation existed because of the hopeless insolvency of the Commercial Bank, known to its managing officer, when it received the draft. It was held that although a trust relation existed, there was no trust fund to be recovered unless it appeared that the assets of the Commercial Bank were increased \$5,000 by the credit given it on the books of the National Bank of the Republic, or unless the claims against the Commercial Bank were decreased \$5,000 by reason of the credit, so that there was \$5,000 more for distribution among its creditors.

That, of course, did not appear. The Commercial Bank received \$5,000, but incurred an indebtedness to the City Bank of the same amount. It used the \$5,000 to pay a previously existing debt to the National Bank of the Republic. At the end of the transaction it was financially where it was at the beginning. Its assets had not been increased or its debts decreased by one dollar. The lessening of its debts to the National Bank of the Republic had been offset by a similar increase of its debt to the City Bank; in other words, there was merely a substitution of one creditor for another. It was therefore held the City Bank could not recover.

The similarity of the cited case to the case at bar is striking. The Central Bank received \$48,000 in money and in doing so incurred an indebtedness exceeding that amount. It used the money so received to pay previously existing indebtedness, the result being that through the transaction it did not add one dollar to its assets or decrease its indebtedness by one dollar. Nothing more was accomplished than to pay one creditor by incurring an indebtedness to another.

In *Empire State Surety Co. vs. Carroll County* (C. C. A., 8th Circ.), 194 Fed., 593, many different questions concerning trust relations and trust funds were involved. Among other things, it was held that "the deposit of checks of third persons which are credited to the depositor and used by the bank to pay its debts bring no money into its fund of cash and form no

foundation for preferential payment to the depositor"—citing *City Bank vs. Blackmore, supra*.

In *Wuerpel vs. Commercial Bank* (C. C. A., 5th Circ.), 238 Fed., 269, a mercantile house assigned an account against a customer to a bank as collateral security for a debt owing to the bank. The customer paid the account to the mercantile house, which thereupon used the money in paying creditors other than the bank. The mercantile house becoming insolvent, the bank sought to establish and recover the amount of the account as a trust fund. It was held that there could be no recovery because the insolvent estate was not augmented by the fund sought to be recovered. Quoting from the Court's opinion (pp. 274, 277):

"It is not claimed that the proceeds of the draft went into the purchase of new goods, but, on the contrary, that they went entirely to reduce existing obligations. That this was a benefit to the bankrupt is obvious. The test, however, is whether it was of interest to the general creditors, by swelling the fund or assets that came to the trustee for distribution among them. If new goods had been bought by the bankrupt with the proceeds of the draft, which went into its general stock, and presumably remained there till surrendered to the trustee, or if there had remained, at all times till bankruptcy intervened, a balance to the credit of the bankrupt, at any or all of the banks with which it did business, an amount in which the proceeds of the draft might be represented, an augmenting of the assets that came to the trustee would be shown. The stipulation and record affirmatively show that no such use was made of the proceeds of the draft, but that, on the contrary, they were used exclusively to pay existing obligations, and added

nothing to the property or money that went to the trustee in bankruptcy.

* * * * *

The general doctrine that the estate in insolvency must have been augmented by the fund sought to be recovered is well settled, and seems not to be disputed. Its application to the facts of this case is the disputed question. The authorities cited are most in point upon the proper application of the rule to the facts shown by the records. Following them, we think that the record affirmatively shows that the insolvent estate, which was to be administered in bankruptcy for the benefit of the creditors of the bankrupt, did not profit from the proceeds of the converted draft in any respect, and that when this affirmatively appears the injured or defrauded party is no more than an unsecured creditor, entitled to no priority, since it is not the character of the wrong done him alone, but also the fact of advantage received by other creditors thereby, that entitles him to such priority."

In *Knauth vs. Knight*, 255 Fed., 677, an insolvent firm daily overdrew their account with a bank in large sums. These overdrafts were secured by pledged collaterals, and at the close of the day's business the firm would deposit enough money to cover the day's overdrafts. The money necessary for that purpose was obtained from plaintiffs (among others) by the issuance of fictitious bills of lading, which were attached as security to drafts which were discounted or sold. Plaintiffs elected to rescind the fraudulent transactions by which their money was obtained, and sought to follow as a trust fund the securities which the bank held as collateral for the overdrafts, and which, after the bank's claim had been satisfied, had

(Testimony of B. J. Ellis.)

which I did not create and had no control over. As I recall it, during the period I was in there the maximum loans of the bank were about \$650,000; that was the peak they reached during that period; the loans were about \$508,000 when I went in; they were \$552,000, about, when I quit. Among the increase of loans was one of \$11,000 to the Frank Investment Company and one of \$5,000 to Ross & Fisher, of which Mr. Ross, the vice-president, is a member, and \$12,000 to another director, Mr. Woodcock. The witness further testified that he remembered when the cash letter came in from the Seattle National Bank containing a check for \$47,000 in favor of the plaintiff; that the letter either arrived at the bank on the afternoon of the 20th or the morning of the 21st; that he talked with Mr. Buckholtz in regard to the cash letter; that it was discussed as usual. Buckholtz and the witness consulted concerning both incoming and outgoing cash items and clearings, and the particular letter was discussed in the usual manner and probably a little more at length, owing to its unusual size; that Buckholtz saw it and the items; that the drafts which were received through the clearings were sent to the Spokane & Eastern because it was the principal and drawing correspondent, and the only time the Central Bank didn't use them in the ordinary course of business was when the remittance was in the extreme east or in [72] California; that in the particular instance Buchholtz and the witness discussed the matter at some length and decided to

(Testimony of B. J. Ellis.)

send it to Spokane. The reason therefor the witness could not state specifically other than that they thought it was regular and drawing on them in settlement of the Seattle letter would avoid, as Buchholtz said, a transfer from some other account to the Seattle National, and would apparently swell the balance at Spokane for a few days.

On cross-examination the witness testified that Mr. Buchholtz didn't have charge of the whole of the credit department; that Mr. Buchholtz and he and the loan committee had charge of that; that Buchholtz had charge of it jointly with him; that in the time that witness had been with the bank prior to the examination made in the last part of June, 1920, he did not have time to entirely familiarize himself with the condition of the bank's paper; that that was necessarily so. He further testified that from the 1st of October and before that time, all items of any consequence, unless they went to the far east or to California, were deposited with the Spokane & Eastern; that the instructions were that the Spokane & Eastern was to have practically all of the business, and that all drafts in payment of whatever the bank had to pay were drawn upon them in that territory, except that Frisco was used for California business and that the National City Bank of Seattle was used for some of the western business; and that the National City Bank was quite actively used at times as they handled the Canadian stuff for the Central Bank; that during that period the custom was, in making

(Testimony of B. J. Ellis.)

remittances to the Seattle National, that about one-half of the settlements would be by drafts drawn on the National City Bank, or possibly not a half, and the other would be by drafts on the Spokane & Eastern; that he sent all the Yakima Valley drafts to Spokane for deposit, and drawing a draft in favor of the Seattle National against the Spokane & Eastern was not irregular, and that it was within the ordinary course of business as it had been transacted to draw it either there or on the National City Bank; that it would not have been sent to the Seattle National Bank in any case because the Seattle National was not a [73] drawing correspondent, a nominal balance only being carried there. While it might not have been out of the ordinary to have done it in this instance, it had never been done and in that sense would have been out of the ordinary.

On redirect examination the witness testified: That it was not a question of drawing on the Seattle National Bank. The Central Bank had the funds in transmittable form; that it was the purpose of the Central Bank that the Seattle National Bank should receive them, but instead of doing it directly, they did it indirectly by sending them to Spokane; that after Mr. Buchholtz came, witness carried on no correspondence with the Spokane & Eastern, but Buchholtz did it all; prior to Buchholtz' arrival witness had occasion to write the Spokane & Eastern almost daily in the regular course of business, but that he wrote no letters after Mr. Buchholtz came.

Testimony of W. L. Nossaman, for Plaintiff.

W. L. NOSSAMAN testified that he was in Yakima on the 27th January with Mr. Miner for the purpose of reporting on conditions to Mr. Spangler, president of the Seattle National Bank; that he asked Mr. Buchholtz for an estimate as to what the Central Bank would pay, and Buchholtz said he didn't think it would exceed thirty cents on the dollar. Witness also remarked something to Mr. Buchholtz that it seemed to him that the Spokane & Eastern would not have appropriated the money if it knew of the outstanding draft of \$51,000, and Buchholtz said they did know of it; he didn't tell witness how they had the information.

Testimony of Harry Coonse, for Plaintiff.

HARRY COONSE testified that he was in charge of the affairs of the Central Bank & Trust Company as liquidator, and in his opinion it would pay between thirty-five and forty cents on the dollar.
[74]

DEFENDANTS' EVIDENCE.

There was introduced in evidence a copy of the complaint in an action pending in the Superior Court of the State of Washington for Yakima County brought by the Seattle National Bank against the Spokane & Eastern Trust Company, Central Bank & Trust Company and John P. Duke, as supervisor of Banking. The action was one brought by plaintiff as trustee for various depositors to recover the balance of the items in-

(Testimony of W. T. Triplett.)

cluded in the remittance letter of 19th January, 1921, the complaint being similar in form and theory to the complaint in this action.

Testimony of W. T. Triplett, for Defendants.

W. T. TRIPLETT testified that he was a vice-president of the Spokane & Eastern Trust Company and a member of the board of directors and of the executive committee; that previous to 18th January, 1921, he had been secretary, and had a long experience in various positions in banking houses; that during the period under inquiry here he had charge of the relations with the country banks who kept accounts with the Spokane & Eastern, or had other kinds of dealings with it; that it had been the policy of the Spokane & Eastern Trust Company for a great many years to build up its country bank business by rendering assistance in furnishing employees to the country banks; that country banks often asked the city banks to recommend someone for a position in such banks and that the Spokane & Eastern at times recommended its own employees for such positions if they were good men, thinking that they would become, in time, officers of the bank and would retain a friendship for the Spokane & Eastern Trust which would build up business between the two banks. The witness then gave twenty-four cases where, upon the request of sundry country banks it had recommended men for employment during a considerable number of years, and stated that in practically every instance it had

(Testimony of W. T. Triplett.)

resulted in cementing the friendly relations between the banks. Five of the cases were recommendations of men then in the employ of the Spokane & Eastern Trust Company. That he has not mentioned a great many who were sent out and proved unsatisfactory. Speaking of the specific instance of the Central Bank and Mr. Buckholtz, the witness testified that Mr. Barghoorn had informed the witness that he was contemplating a change in the Yakima bank and asked witness if he knew [75] of anyone competent to take the place.

The witness continued: Barghoorn stated that he wanted a man who was peculiarly fitted to look after loans and manage a bank in a town the size of Yakima and who was capable of building up a business. Mr. Barghoorn was frequently in the bank, being a member of the board of directors of the Spokane & Eastern at that time, and would ask me if I had got him a man yet. I sent up several who had come in to us from outside banks where business was contracting, but he did not take any of them because we were not in a position to recommend them as he wished them to be recommended. Finally, I had a talk with Mr. Rutter and we decided that if Mr. Barghoorn wanted to negotiate with Mr. Buckholtz that we would let him do so. We did not like the thought of Mr. Buckholtz leaving our employ, but we thought it might be a good thing for him as it looked at that time as if the Central Bank was a nice opportunity for a young man in a growing town like Yakima. I sent Buck-

(Testimony of W. T. Triplett.)

holtz up to Mr. Barghoorn's office, telling him that Barghoorn was looking for a man to go to Yakima and ultimately succeed Mr. Ellis as cashier of the bank and that we had recommended him for the position. Later in the day, Buckholtz said to me that he had decided to take that position and asked when he could get away, and I said "To-night if you want to," and he went away that night. Within my knowledge and my contemplation there was no sort of a string to that employment of Buckholtz nor any sort of understanding, express or implied, that he was to be the agent of the Spokane & Eastern. He left our employment at that time, and in accordance with my usual custom I notified the comptroller's department that he was off the pay-roll. There was some salary coming to him for a few days in January, and he afterwards requested the comptroller to send the balance that was due him to his wife, which was done. Speaking for myself, I have told everything that occurred between myself and Buckholtz respecting this employment. We made no arrangement with Buckholtz to send to him for collection notes which were held as collateral for indebtedness of the Central Bank to us. It was discussed in our Executive Committee and we decided that it was all right for Mr. Buckholtz to have those particular notes. We were aware that Mr. Buckholtz was ultimately to succeed Mr. Ellis as cashier of the bank, and Mr. Ellis, with all due respect, did not handle our rediscount notes in the way we thought he [76]

(Testimony of W. T. Triplett.)

ought to. The statements that he sent to us with the notes showed that many of the borrowers had produce which they could sell by the time the notes came due and pay the notes off, and we would charge their accounts with the notes at maturity and send them down there expecting they would be paid and the rediscount liquidated, but instead of that we found he took renewals of them. Of course they were his notes when they were charged to his account and he could do what he pleased with them, but when he resubmitted them to us with ninety days additional time, we didn't like it. Knowing Mr. Buckholtz' confidential position there with Mr. Barghoorn, we had no hesitancy in sending them to him, but we didn't want Ellis to get hold of them. From that time on, they were sent to him individually; that arrangement had no relation to anything that was done before he went away, but had its origin after he had gone to Yakima. It had its origin solely and exclusively in the conversation and correspondence to which we have referred and was solely for the purpose stated. After the Central Bank closed, Mr. Buckholtz called me up, or I called him up, and he said, "the bank is closed," and I said to him that I supposed he was footloose and he said "yes." I said that I had a job for him; that I wanted him to take possession of all the notes and collateral we had down there and look after our interests in Yakima, and he did that for a day or two, and then we had another conversation and I told him to

(Testimony of W. T. Triplett.)

gather up all our collateral and bring it to Spokane, which he did. When he came back to Spokane we discussed his future and decided we needed him in Yakima to look after the items that he had in his possession, and he has been so occupied since that time except an occasional few days when we would send him out to some correspondent bank to go into their affairs with them. Mr. Buckholtz has been in our employ off and on since 1914, and Mr. Rutter and I always looked on him as our prize man; one of the coming young fellows of the bank; and we hated to see him leave the bank for we knew that he would develop into something better. Buckholtz had been out of our employ two or three times since 1914. He went to St. Joe, Idaho, and was cashier of the bank there for two years; absolutely disconnected from us. After that he came back and entered our employ. The Idaho bank was a small bank where there wasn't much opportunity for him to get credit experience [77] which he was desirous of getting, and we finally gave him a position in connection with our Credit Department. Later on, he went to Coos Bay in the employ of a bank there, but some time afterwards he came back to us and we hired him again. With these exceptions he has been in our employ since, although he might have gone out to relieve someone for a week or so in other banks. During his connection with the Coos Bay and Idaho banks, he had no connection whatsoever with us. The peak of the deposits of the Spokane & Eastern

(Testimony of W. T. Triplett.)

Trust Company was on 31st December, 1919; they amounted at that time to fifteen million and some hundred thousand dollars. They commenced to decrease after that. In January, 1920, I think our deposits were running \$11,000,000. Some time in January, 1921, they shrunk to \$9,400,000, or a shrinkage of some \$6,000,000 in a period of little more than a year. This decrease was caused by the general change in financial conditions. Some of the banks suffered likewise and some did not. At the present time our deposits are somewhat over \$9,000,000. The changes I have mentioned are just in the ordinary course of business. As an illustration of how deposits decreased: December 31, 1919, country banks had on deposit with us more than \$6,000,000; last fall their deposits were less than \$2,000,000. We have always rendered more or less assistance to country banks, but especially beginning in the latter part of 1919. The territory over which that assistance extended was from Tacoma on the west to Forsythe, Montana, near the Dakota line, on the east, and from Republic, Washington, down as far as Hollister, Idaho, which is near the Utah line. I am not prepared to give you the exact number of banks we were assisting in one form or another during that time, but it was more than seventy-five and less than one hundred. We would lend them on bills payable secured by collateral; we would rediscount their customers' notes with the bank's endorsement; we would sometimes buy notes outright from them that they wanted

(Testimony of W. T. Triplett.)

to sell so they would not have to endorse them, and there were times when we loaned directly to the bankers, that is, to the men instead of the banks. I don't know the date exactly, but I think the peak of our assistance in that way was in the midsummer of 1920, when we had a little over three and a half million dollars that we had loaned to country banks. It has now gotten [78] down to about \$1,280,000. In July, 1921, it was \$2,600,000 and has been going down since just in the ordinary course of dealing to the figure mentioned. There has been no change in our policy. I think we first began to render assistance to the Central Bank in the spring of 1920. I do not recall the particular circumstance except they applied for credit in the usual way, and we decided to carry some re-discounts for them. From that time on, it continued as shown by the exhibits and by the evidence here. We had no different arrangements with them than we had with other country banks. At the peak the total sum we had invested in assisting the Central Bank was \$212,000. When its doors closed, the amount was less than that, but I haven't the figures here. This was a large sum, but we had a great many other exceptions along the same line. We had a bank at Moscow we loaned over \$100,000 to, including loans and re-discounts; one at Waterville, more than \$175,000; a little bank at Almira, about \$85,000; a bank at Republic, \$75,000; a bank at Wenatchee, \$275,000; and a bank at White Bird, \$200,000. Of course

(Testimony of W. T. Triplett.)

many of the banks we were assisting were in small sums. Aside from the Central Bank most of these banks weathered the storm, though some did not. There was a bank at Nez Perce that we had quite a large sum loaned to, a bank at Kamiah and Orofino; a bank at Lind; one at Grangeville, and there might be one or two others, were closed. Notwithstanding our assistance, they had to close their doors. As to the question of assistance to the Central Bank & Trust Company, I don't think at the outset it was a question of rediscount, but of borrowing in one form or another. They had two forms of borrowing. They would send us their notes secured by collateral and rediscounts bearing their endorsement or guarantee; of these borrowings \$20,000 was secured by Liberty Bonds. Later, they wanted to get an additional sum and they wanted to know if it would be satisfactory to us to dispose of the Liberty Bonds and give us notes for collateral. They sold them to Mr. Barghoorn, but the transaction left us with some slow paper behind the note instead of the Liberty Bonds we had to begin with. On the rediscounts, the system we had was to send the rediscounts to them ten days before they were due, write them a letter, and under the arrangement we had with them we were to charge their account on the due date whether they were paid or not. That custom was followed generally until they got into an overdraft. They had considerable overdrafts [79] in January and I didn't like it. The custom of recharging the

(Testimony of W. T. Triplett.)

discounts on the due date was generally followed until about January 1, 1921. In rediscounting notes, we required financial statements showing the solvency of the borrower and the assets from which he could liquidate the note at maturity. Sometimes the bank's supply of those notes would be more or less depleted; they did not have any more left and we would then take notes that we considered good, but slow. We didn't aid any banks unless they were asking for financial assistance, and the reason they were asking for it was that their resources had run down through shrinkage in deposits, or for some other cause, so that in all of this work we were doing, we were dealing with banks that were in a greater or less degree of trouble, present or anticipated. The assistance we rendered was extended to both members and nonmembers of the Federal Reserve System. Some of the banks which were members of the Federal Reserve System came to us and borrowed without going to the Federal Reserve because they had accounts with us and felt they could lean on us. I first heard of the draft drawn on us by the Central Bank & Trust Company in favor of the Seattle National Bank on the morning of 25th January through a letter from Mr. Buckholtz dated 24th January. The letter begins: "Looks pretty nice to get a slip showing a \$39,000 balance for Saturday, but, now, wait until that big draft hits you to-morrow or Wednesday, which together with draft charged back will mean an overdraft of probably

(Testimony of W. T. Triplett.)

\$15,000 again." That was the first information I had of any outstanding draft of that sort. When I read it, I went to Mr. Rutter to tell him that they had drawn on us for some large amount, evidently. Mr. Rutter picked the letter up and started to read it, and then he took a letter from his desk and handed to me, and I read it, and it mentioned the amount of the draft. That was the first I heard of it. The letter which Mr. Rutter handed me is the one stating that a \$51,000 draft on us had been sent to the Seattle National Bank and in which it was said "If you pay it, the overdraft created will be the limit to date of credit advanced this institution." That was the first intimation I had that any draft of this sort was outstanding. After Mr. Rutter and I had read those two letters, we went to our Executive Committee meeting, and I went to the country banks department [80] and found out how much they had on our books so as to be able to tell the Executive Committee [81] what the status was, and when we saw that it was going to overdraw their account \$27,000 if we paid that draft, we went into executive session and decided not to pay it. We notified Mr. Barghoorn of our decision and Mr. Rutter got in touch with Fred Ross. We had some difficulty in getting hold of Mr. Barghoorn, and I think it was some time about 3:00 o'clock in the afternoon before he was notified of our decision. I had no telephone communication on that subject whatever with Mr. Buckholtz. I would not have discussed the ques-

(Testimony of W. T. Triplett.)

tion of the draft and what the bank was going to do about it over the telephone; absolutely and unqualifiedly those letters were the first intimation I had of any such draft. The stamp which appears on the letter to Mr. Rutter is placed there by the mail clerk who receives the mail, opens it and distributes it. He places a time stamp on each letter as he opens it, and that stamp shows that the letter was received at 8:00 o'clock on the morning of 25th of January. I called Mr. Buckholtz up on the 25th. We first talked about some Liberty Bonds Mr. Barghoorn had back of his notes and I told him about those bonds having been disposed of. Then when we decided to charge certain mature notes to the bank's account, I called him up and asked him to get a pencil, I was going to make some charges against his account and make them right now. He didn't discuss it or ask me any questions about it, but directed me to wait a minute and got a pencil and came back and said "shoot," and I gave him a list of the notes and what they were for, and after we had talked about them for a few minutes I hung up the phone. I am not positive whether I at that time communicated to him the decision of the bank not to pay the draft. The draft came into the clearing long about noon on the 26th and was rejected pursuant to our previous decision. I didn't tell Mr. Buckholtz in any of our conversations on that day to be sure and get those charges in on the books of the bank that day. I didn't know what they were

(Testimony of W. T. Triplett.)

going to do; I merely told him what we were going to do. The remittance from the Central Bank bearing date January 21, 1921, containing the \$45,-000 draft, the \$3,000 draft, and a number of smaller items aggregating \$48,594.65, was received at our bank about 9:00 o'clock on the 22d January. I didn't see that remittance as we have a mail teller who handles such matters and this was just entered on our books to their credit in due course. [82] My attention was called to the remittance in this way: The lady who keeps the country bank ledger places on my desk each morning a list of the country banks' overdrafts. The 22d was on Saturday, and on Monday, the next business day, when the overdraft list was placed there, I noticed that the name of the Central Bank which had been there most of the time, with a few exceptions, was missing, and I thought she had made a mistake, so on my way to the executive meeting I stopped and asked her if she had not forgotten that name, and she said that it had made a big deposit. I asked her to show me and she turned to the ledger sheet which showed a quite sizeable balance, \$38,000 or some such amount, and I afterwards looked it up and found the deposit slip. The aggregate of the deposits which the Central Bank made with us are shown in the statement that was introduced in evidence and that corresponds with our books, allowing for the difference in time. There was nothing to direct my attention to that particular deposit slip except it was a good sized amount, and

(Testimony of W. T. Triplett.)

I was glad to see it. There was no letter accompanying it, just the slip, and I had no information on the subject except what the deposit slip gave me, and I received no other information before the 25th as to it. That deposit was received and carried to their credit about 11:00 o'clock on the morning of the 22d of January; on the 21st there was an outstanding draft against us came in for \$9100; on the 22d, one for \$500 and one for \$58.50; on the 24th, one for \$5.76; one for \$303.75, one for \$1438.62, and one for \$17,789.38. These drafts were paid in due course by the bank and they were what depleted the balance so that the cash balance at the end of business on the 24th in favor of the Central Bank & Trust Company was a little more than \$24,000; no drafts drawn against us by the Central Bank came in on the 25th. We paid some drafts on the 26th after that came in. Between then and the morning of the 26th we received a remittance from them of \$921.21 and one for \$143.09. There were other credits on the account put on that day, notes that they had sent us for rediscount. I think the balance was less than \$2,000 at the close of business on the 25th after we had charged off other matters. On the 25th, we charged up [83] rediscounts. After we decided not to pay the draft, we decided that we would charge up past due notes to the amount of \$25,672.64. We only charged up past due notes, notes that were supposed to have been paid on their due dates. When that was done it would leave the

(Testimony of W. T. Triplett.)

account less than \$2,000. I would have to get the figures to be exact on that. No confidential matters were discussed between Mr. Buchholtz and me over the long distance telephone; we would not discuss any matters over the telephone that might get to the public and be detrimental to the bank. Matters of importance that we would not object to anyone hearing would be discussed over the telephone, but nothing concerning the welfare of the bank; such matters were committed to written correspondence. The Central Bank had had an overdraft with us for some little time, in fact during the year 1920, and running along into January, 1921. In the early part of January we told Mr. Barghoorn that we were not going to pay any more overdrafts. In fact, the Executive Committee went on record against paying overdrafts for any country bank, but we didn't adhere to that rule rigidly because a check might come in and if we turned it down it would embarrass the bank, so we were more or less lenient. However, he was informed along in January that he must cover the overdraft and keep it covered, and after he hired Mr. Buchholtz and took him to Yakima they sent us enough rediscounts to cover the overdraft. That meant that we were carrying a much larger sum for the bank than we had been in spite of continued rediscounts and the substitution of collateral that would enable him to sell his Liberty Bonds, the account kept being overdrawn, and it ran into quite a considerable figure. It got to a place where we

(Testimony of W. T. Triplett.)

thought it was out of all reason. The paper that was coming in to us was not of the highest type; it looked like it might be a little slow to realize on, and when we had as high as \$200,000 loaned to the bank, we felt it would be foolish to burden ourselves with paper that might ultimately be a loss. The paper simply wasn't satisfactory, and we decided that if we paid the overdraft of \$27,000, all we could get for it would be a [84] bunch of paper that wasn't satisfactory, as the paper that had been sent us before was not satisfactory, and so we decided we would not pay it. That was the sole reason for our refusal. Prior to the time Mr. Buchholtz went to the bank in the month of January, our source of information as to the condition of the bank and its prospects and outlook was either Mr. Barghoorn or Mr. Ellis. After Mr. Buchholtz was hired, he did all the corresponding. He kept us informed by letter and telephone. Outside of what he may have said on the telephone, the letters in evidence gave us the total information as to the condition of the bank. Nothing that would reflect upon the condition of the bank was talked over the telephone. I don't think anything serious was talked in that way because we would not have discussed it over the telephone. Up to the time that I read the letter to Mr. Rutter dated 23d January, I had no idea that the bank was insolvent or would go on the rocks. We had letters from Mr. Buchholtz from time to time; some days he would feel discouraged,

(Testimony of W. T. Triplett.)

and the next day he would say things were coming along fine; that is all we knew about the condition of the bank. I don't recall having any talk with Mr. Barghoorn after Mr. Buchholtz went down there except to show him some letters I had from Mr. Buchholtz.

On cross-examination the witness testified as follows: The rendering of financial assistance to other banks was done in the regular course of our banking business. When we loaned money we charged interest for it, and when we rediscounted paper we would not take any that we did not think was good. We expected that by extending assistance to these banks, a willingness would be created to bring other business to us. We were willing to assist the Central Bank, but did not wish to lose money in doing so. I am fond of Mr. Buchholtz personally and consider him a very valuable man. I wouldn't like to lose him, but we have men higher in our organization that we have let go to smaller banks if we felt it was for their interest, and we thought it was a good opportunity for Mr. Buchholtz to go to Yakima and work up business for himself. He is a married man, and his wife did not leave Spokane. His home is in Spokane and he is still [85] living there. When he came down here I thought we had lost him for good. When I said in the letter of 5th January to Mr. Ellis that "We have, after talking to Mr. Barghoorn, credited you with \$12,681.05 to cover the proceeds of the rediscounts

(Testimony of W. T. Triplett.)

sent by you. Two of the notes were not altogether satisfactory, namely those of J. L. Parker and the Western Fruit and Produce Company; but as Mr. Buchholtz, who is one of our right hand men is accompanying Mr. Barghoorn to-night, he will endeavor to obtain substitution of other paper." I understood that Mr. Buchholtz was going to endeavor to obtain the substitution of other paper for the Central Bank to enable it to secure money. We turned those notes down, but took them temporarily in order to tide them over. It was our paper subject to their getting something else that would be satisfactory. When I said that Mr. Buchholtz is our right hand man, he had been with us a great many years and we had not yet got to the place where we realized that he was gone. After the Central Bank closed its doors, he was back on our pay-roll immediately. I know that the liquidator in charge of the Central Bank has refused to allow Mr. Buchholtz' claim for salary because he said that it was not established to his satisfaction that Mr. Buchholtz was on their pay-roll. I didn't like the way Mr. Ellis handled our rediscounts. If we were going to render such assistance to the Central Bank as it requested of us and needed, we felt it ought to have a man there who would be able to pick out the kind of paper that would be satisfactory to us. If the Central Bank wanted to get the assistance, it was up to them to put somebody in there that would do it our way. They could not get assistance unless

(Testimony of W. T. Triplett.)

they furnished us the kind of paper we wanted, and I had sufficient confidence in Mr. Buchholtz to believe that he understood our requirements and would be able to do it. We didn't want Mr. Ellis to get hold of our rediscounts at all. Mr. Ellis was cashier of the bank, but we knew Mr. Buchholtz' confidential relations with Mr. Barghoorn and that Buchholtz would ultimately succeed Ellis as cashier of the bank. During Mr. Buchholtz' stay in Yakima he did not write to Mr. Barghoorn, but he wrote letters to me that I showed Mr. Barghoorn. Thereupon the following questions were put to the witness by counsel for the plaintiff, and the following answers given:

[86] Q. You knew of Mr. Buchholtz' confidential relations with Mr. Barghoorn, and yet during all of Mr. Buchholtz' stay here he never wrote a letter to Mr. Barghoorn?

A. No, but he did write letters to me that I showed Mr. Barghoorn.

Q. Sure, that is the way it was done; that is the way Mr. Buchholtz communicated everything he had to say to Mr. Barghoorn, whom you claim was his employer,—did it by writing to you direct, and you showed it to Mr. Barghoorn if you chose. That is true, isn't it? A. If I chose, yes.

There was a run on the Central Bank during the first of January. After it had been going on for three or four days, we heard they were having some heavy calls. On the 5th of January Mr. Buchholtz went down with Mr. Barghoorn. When

(Testimony of W. T. Triplett.)

Mr. Buchholtz went to Yakima, the Central Bank owed us \$142,000. Some time afterward, in January, it went up to \$212,000; that was made up largely of rediscounts which Buchholtz sent us. When the account was closed, I think the amount of the Central Bank's indebtedness to us was \$182,000, but it might have been \$162,000; I can get the figures later. After January 1st, we charged some rediscounts back promptly and some we didn't. The main reason we didn't charge them all back was because we didn't want a big overdraft on the books. We own a rediscount until it is either taken up by the bank or paid. We changed our policy in January of not charging back rediscounts after they were dishonored because we didn't want any overdraft increases. The Central Bank owed us \$142,000, part of which was secured by Liberty Bonds and might be eliminated from the calculation, but later on they had run the amount up to \$212,000 and we had to render assistance on [87] paper that we considered slower. We had increased the load we were carrying for them and did not want to carry an overdraft in addition. If we had charged the rediscounts up to them and returned the paper, we would have had merely a bank overdraft, while if we held the paper we would have something to show for it. We would rather have a past due note than an overdraft. We held some fruit drafts that we didn't charge up for a long time. They are a different thing from rediscounts because they

(Testimony of W. T. Triplett.)

are dependent on the arrival of cars, transportation facilities, etc. When I said to Mr. Buckholtz in a letter that I was enclosing a list of outstanding fruit drafts some of which were a hundred years old, more or less, that was just a figure of speech. They had been out for some time. As soon as the fruit began to move, the Central Bank made arrangements with us whereby they were to send us drafts drawn payable on arrival of cars with bills of lading attached. They would send them to us like any other cash item and we would give them credit for them, and when they were paid we would charge interest for the time they were outstanding. If any of the drafts were dishonored, or the apples froze in transit, or any other condition of that kind, we charged the drafts back to the Central Bank. We usually try to give them all the time they need to get the drafts paid so as not to be charging something back that would reduce their account and disturb their reserve. It was the same arrangement we had with some other banks. I first learned of the outstanding draft of \$51,000 on 25th January. This was through a letter written by Mr. Buckholtz on the 23d to Mr. Rutter. At that time the Central Bank had a credit balance with us of about \$24,000, and we charged back to them enough rediscount paper to cover that balance. I called up Mr. Buckholtz and told him that we were going to make these charge-backs on our books. I did this because I knew it would disturb their reserve and it would be up to

(Testimony of W. T. Triplett.)

them to raise funds somewhere. If I had waited to advise him by mail, he would not have known of the charge-backs for another day, and we wanted him to know right away. Mr. Buckholtz said in his letter that if the draft was not honored the bank would be busted, but I didn't know whether that meant anything because there are plenty of ways for raising money at the eleventh hour. If we had paid that \$51,000 draft, the Central Bank account with us would have been overdrawn some \$27,000. They had had as large an overdraft [88] as that before, but we didn't want to go on and create another overdraft. They had an overdraft with us almost continuously during the month of January and until they sent us some thirty thousand odd dollars worth of paper that practically wiped that out and eliminated the overdraft. My attention was directed on the 24th to the large remittance received on the 22d. I found out they had sent us a remittance of forty-odd thousand dollars in which were two large items, one not exceptionally large and the other of considerable size, \$45,000.

Testimony of R. L. Rutter, for Defendants.

R. L. RUTTER on direct examination testified as follows: I am president of the Spokane & Eastern Trust Company; have been with that company for about twenty-seven years. The general policy of the company toward getting employees for other banks and extending financial assistance

(Testimony of R. L. Rutter.)

to other banks is as testified to by Mr. Triplett. I believe Mr. Barghoorn bought the control of the Central Bank in the first half of 1919. Shortly afterwards he arranged with me for our bank to act as his correspondent. It was just the ordinary arrangement with the country bank; we acted as their correspondent, taking rediscounts, etc., as the business demanded. In the latter part of 1920, Mr. Barghoorn told me it was necessary for him to get someone to succeed Mr. Ellis. He negotiated with Mr. Richards, a gentleman connected with the Spokane & Eastern. Mr. Richards went to Yakima for a day or two and decided not to take the offer. Mr. Barghoorn continued to inquire about getting someone, and finally he decided to employ Mr. Buckholtz. I had known Mr. Buckholtz well since 1914. I keep in close touch with my employees, have an actual personal acquaintance with all of them and am on friendly terms with them. I had a great deal of confidence in Mr. Buckholtz and have yet. The only conversation I had with him about the matter was when he came to me and asked if we were trying to get rid of him. I assured him we were not, but thought it a good opportunity for him and a good thing for Mr. Barghoorn. He was concerned about the reason for our recommending him for the place. We knew about his being employed and approved of it. There was no understanding, express or reserved, on my part, or the part of the bank, or anybody connected with it, that Mr. Buckholtz should go to

(Testimony of R. L. Rutter.)

Yakima as the agent of the bank. He severed his connection not only in form, but in fact, with our bank. Upon my conscience and without reserve of any kind or [89] character whatever; that is the whole truth. I first heard of this \$51,000 draft by a letter from Mr. Buckholtz dated 23d January and received 25th January. That is the first I had heard of it in any shape, manner or form. I do not think it was possible that any other employee or officer of the bank could have been informed of it before. If anyone from Yakima had called up to tell our bank of such a draft, I would have been informed. Mr. Triplett brought his letter down dated a day later but received the same morning, and we went into the Executive Committee and there determined not to pay the draft, after calling in and consulting with our attorney Will Graves, who is a member of our board of directors. During the time Mr. Buckholtz was in Yakima, we had no idea that he would act as the agent of the bank. After our employees leave us and go to other banks, they frequently write us telling us their troubles and asking advice, and come to us for help, which they generally get. With respect to the severance of Mr. Barghoorn's connection as a director with our bank, a few days before the annual meeting he came into my office and said that he didn't care to be elected at the next meeting. He gave no reason, and I told him it would be all right; that was all there was to it. With respect to the letter from Mr. Buchholtz re-

(Testimony of R. L. Rutter.)

questing me to extend my good offices to keep the bank examiners away from him if possible, I did nothing about that in any way; never mentioned it to anyone nor directed anybody else to. I am sure I could not have done it if I had tried to, but I had no notion of doing it anyhow. I remember the meeting of the Guaranty Board testified to by Mr. Hay. The Governor said something about a draft having been turned down, and I told him that I didn't think it was possible; then something was said about somebody being over there, and I said Mr. Buchholtz was there working for Mr. Barghoorn. I told him who Buchholtz was and that I knew he was a good man, and so on. Whatever form of expression I may have used, I did not intend to convey the idea that he was over there representing us, for I had no idea of that kind in my own mind. I don't remember that date, but if it was the 22d, as testified to by the examiner, no draft had been turned down then and I had not heard of any [90] draft that was likely to be turned down, and didn't suppose any would be. [91]

On cross-examination the witness testified as follows: This matter between the Governor and the Bank Examiner interested me in no other way than in the general welfare of the financial interests of the state. My recollection is that it was said that a draft had been presented and not paid. I didn't ask the Governor not to press it. As I remember it, I told him that Mr. Buckholtz, a good

(Testimony of James A. Loudon.)

man, was over there in the employ of Mr. Barghoorn.

Testimony of James A. Loudon, for Defendants.

JAMES A. LOUDON, on direct examination testified as follows: I am connected with the First National Bank of Yakima. Commencing with the 1st of December, 1920, and going on during the month of January, 1921, in a period of six weeks, there was a decrease of about 13% in our deposits. It was a gradual decrease caused by the cessation of fruit shipments.

On cross-examination the witness testified as follows: There was no run on our bank, that happens every year. I heard there was a run on the Central Bank in the early part of last January.

Testimony of H. C. Lucas, for Defendants.

H. C. LUCAS on direct examination testified as follows: I am president of the Yakima Trust Company. There was a decrease in the deposits in our bank of about 16% during the latter part of December and January, 1921. It was caused in the same general way that Mr. Loudon spoke of.

Testimony for Charles Heath, for Defendants.

CHARLES HEATH on direct examination testified as follows: I am connected with the Yakima Valley Bank. During the latter part of December, 1920, and January, 1921, there was a decrease of deposits in our bank of about 13%.

Testimony of W. F. Buckholtz, for Defendants.

W. F. BUCKHOLTZ testified on direct examination as follows: I am the Buckholtz that has already testified for the plaintiff; I am 28 years of age; was born in Minnesota of German parentage. I first entered the employ of the Spokane & Eastern Trust Company in the early part of 1914 as book-keeper. I continued in that capacity for a year or two; then went out to a country bank for about two months while the cashier was away. I was just employed to take his place and recommended by the Spokane & Eastern Trust Company. [92] When I came back I returned to the employment of the Spokane & Eastern, but during that summer there were several times that I went out to other banks temporarily to relieve people that were on vacations or sick. I went on the recommendation of the Spokane & Eastern, but the bank to which I went paid my salary. In February of 1916, on the recommendation of the Spokane & Eastern, I got the position as cashier of the First State Bank of St. Joe, Idaho. I was with that bank a little over two years, and then went back into the credit department of the Spokane & Eastern, remaining with it continuously for two years, about. Then I severed my connection with the Spokane & Eastern and went to Myrtle Point, Oregon, and acted as cashier of a bank there for about four months. I went there on the recommendation of the Spokane & Eastern, and after I quit I took a little trip and

(Testimony of W. F. Buckholtz.)

finally dropped into Spokane and went back to work. I have had no other employment by any other bank since that time until I came to Yakima. Somebody told me that Mr. Barghoorn wanted to see me, and I went to his office and had quite a lengthy conversation with him. He told me that he knew that I had had considerable credit experience and that Mr. Rutter had recommended me very highly as a man who was capable of handling credit in his bank at Yakima. I didn't give him an answer at that time. I was surprised at his proposition and felt as though Mr. Rutter wanted to get me out, and it kind of hurt my feelings, and I went to Mr. Rutter and had a talk with him. He assured me that it was not a question of getting rid of me, but that it was a mighty good thing for me; and after talking it over with him I told Mr. Barghoorn I would go. Mr. Barghoorn told me that he eventually intended that I should supersede Mr. Ellis and be cashier of the bank. I left that night with Mr. Barghoorn to go to Yakima and had another long talk on the train. He explained to me in detail what my duties were to be, to work together, to work into the credit; what I was to do; what Mr. Ellis was to do, and how to get along. Thereupon the witness testified as follows: "I asked him who I was to look to as my boss, if there was going to be a boss and who it would be, and he said there would be no one between he and I; I said, 'Well, you have a cashier there,' and he said, 'That part of it [93] is all right, eventually I intend

(Testimony of W. F. Buckholtz.)

for you to be cashier.' ” At that time I totally and completely severed my relations with the Spokane & Eastern. There was no express, implied or inferred agreement on my part, or any suggestion of any sort made to me by anybody that I was to be in Yakima as a representative of the Spokane & Eastern, and I did not understand, suppose or infer [94] that I was to be. I remember the correspondence with Mr. Triplett in which I said, in substance, that I saw no objection to taking rediscount paper as it came due and holding it as agent of the Spokane & Eastern. It first came up in this manner: A borrower would come in to deal about his note, to make changes, renew or reduce it, or take security, and the note would not be in the bank; it was in Spokane. It made it inconvenient, and I wanted Mr. Triplett to send the notes that were past due, or nearly due, down here, and told him I would look after them for him; that is, look after collections and renewals, and would return the renewals, and so on. I was going to do that in my individual capacity and was not going to be paid anything for doing it by the Spokane & Eastern. It was just for the accommodation of the Spokane & Eastern and also for our benefit. I wanted to reduce the rediscounts as rapidly as possible. In my conversation with Mr. Barghoorn on the train he talked to me about the handling of the rediscounts. He explained to me that the Spokane & Eastern had complained about the shape the rediscount notes would get in; that they would not

(Testimony of W. F. Buckholtz.)

have sufficient information on them for the bank to ascertain whether they were good liquid paper, or sound or not, and the result was that it entailed a great deal of correspondence before they would get anywhere. He said Mr. Rutter had told him that I knew pretty well what their requirements were and what was necessary for them to pass on a note, and that he felt it would save a lot of confusion and delay. When I got to Yakima, I took charge of the collections and the paper, what is generally called the Credit Department. I did the bulk of that work, although I would consult Mr. Ellis very often and occasionally he would handle a matter by himself. A great many times, however, I would handle it without consulting him. I tried to run it in the same way that I would run the affairs of any other bank. In some of these letters, I speak of not having nerve enough to send them certain kinds of paper, etc. That did not refer to the soundness of the paper, but to its liquidity. In January, the Spokane & Eastern was not financing crops for that year that on the face of them the notes would not be paid until the fall of 1921. They held me to paper that had the actual commodity behind it and which would be liquidated in a short period. They commenced to make payments on the crop in 1921, usually in April, May and June, so what I said about those notes not being good, and so on, unless otherwise [95] explained, refers to their liquidity. My letters and telephone calls between Yakima and Spokane were with Mr.

(Testimony of W. F. Buckholtz.)

Rutter and Mr. Triplett, except a time or two that I called up Mr. Hubbard. I communicated with Mr. Rutter because he was the president of the bank and with Mr. Triplett because he had the management of the country bank business for the Spokane & Eastern. The calls to Hubbard did not relate in any way to the business of the Central Bank. He had a good-sized post-dated check on the First National Bank of Yakima for collection, and he wanted it promptly presented for payment the day it matured, and he sent it to me and asked me as a personal favor to attend to it for him. With respect to my wife remaining in Spokane while I was in Yakima, I have my own home in Spokane and my wife and family have lived there for quite a while. We don't change about very much. When I went to Myrtle Point, which is a long ways off, and was there for two or three months, I left her in Spokane at that time. That did not imply that I expected my employment would be temporary. I expected it to be permanent, and if it had been I was going to bring her to Yakima. I remember the occasion I went to see Mr. Louden at his bank and gave him a card. The occasion of my going into his bank was that I wanted to get his ideas as to crop movement and conditions and the general tendency in Yakima at that time, and I dropped in there one noon and introduced myself and told him I was over at the Central Bank, and he said that he understood someone was there from the Spokane & Eastern and asked if I was, and I said

(Testimony of W. F. Buckholtz.)

yes. Before I left I gave him one of my cards. It happened to be the only cards I had; it was the same kind of a card that I gave Miner of Seattle. I had had those cards printed a couple of years before that, while I was working for the Spokane & Eastern. I had quite a large supply. They were the only business cards I had and it was for that reason that I used them. As to the conversation with Mr. Miner, I came out of the hotel with him and some other men, and I asked him if he was from the Seattle National Bank, and he said yes, and we introduced ourselves, and he asked how I spelled my name. I told him it was a hard name to remember and I gave him one of these cards. He asked how long I had been with the Spokane & Eastern, and I said probably five or six years. We had no [96] other conversation of any length except a few words down in the Central Bank. Minor and Nossaman were there gathering information, and one of them asked if I knew how this happened, and I said yes, and offered to assist them in gathering the facts. I was there and doing nothing. I cannot recall what the conversation was, but we did talk about it as we stood around there. I don't recall that I said the bank would not pay more than 30%, but it is quite possible that I did; that was a wild estimate. I was down there during those conferences and heard the list of losses that the Yakima banks had piled up, and it was apparent to me, after seeing what they aggregated, and there were various estimates, some joking and

(Testimony of W. F. Buckholtz.)

some serious, mentioned after all hopes had been given up, and I believe they estimated losses at about \$100,000, and I took into consideration their deposits and the amount of paper in the pouch, and lumped it off at about 30%. I was confident those local bankers knew what they were talking about. I don't remember saying what the percentage would be, but that is about the way I thought about it after hearing the Yakima bankers at the conference. I did not tell Miner that I had telephoned the Spokane & Eastern of the drawing of this draft. I didn't telephone the Spokane & Eastern about it. I never talked about that draft to anybody at any time. I did not communicate the fact of that draft having been drawn to the Spokane & Eastern by any other means than the two letters, one on the 23d and the other the 24th of January. I didn't communicate to any of the officers of the Spokane & Eastern Trust Company anything about the condition of the bank, except current business, save as it appears in the letters that have been put in evidence, and so far as I know those are all the letters that I wrote them. The cash letter which the Seattle National Bank sent with its collections was never seen by me. The first I knew about it was late in the afternoon, when I think the bank was closed. I was in the habit of occasionally dropping around to the draft register and I saw a draft registered on the book drawn on the Spokane & Eastern, and I immediately asked Mr. Lemon what it was, and that was my first knowledge of it. He went on to

(Testimony of W. F. Buckholtz.)

explain what it was. I had not talked those collection items over with Mr. Ellis when [97] they came in. My first knowledge of their receipt was when I saw the draft registered on the register. I think Mr. Lemon called my attention to the two large checks in the remittance letter draft. He called my attention to how it occurred. He said there was a large collection letter which came from the Seattle National Bank, and the items had been put in the clearings and settlement made and a good-sized remittance was coming to Spokane as a result of what they won in the clearings. Just what items were going to Spokane I didn't know until about a month ago, since this lawsuit has been started. I didn't know what items went to Spokane, what kind of drafts, or what the items were until after the lawsuit was started. I didn't know the method of clearance in detail while I was employed at the Central Bank. I knew it was done through the Yakima Valley Bank, but I didn't go into it because I had nothing to do with that department. I first knew Mr. Triplett when I was a schoolboy in Spokane, and he and I have been friends for a good many years. During the time of my employment in the Spokane & Eastern, I had a great deal to do with him outside of our business relations. We were on very friendly and familiar terms and I was very fond of him.

On cross-examination the witness testified as follows: During the last two or three years I have

(Testimony of W. F. Buckholtz.)

only been at home about a fourth of my time. The occasion for my being away so much was working in other banks, and sometimes an occasional trip. The last bank I was employed in was at Myrtle Point in the spring of 1919. The witness then went on to enumerate a number of banks in which he had worked temporarily to relieve persons from president to bookkeeper absent on vacation for periods ranging from two weeks to two months. "When I got through I went home." Resuming, he testified: In my conversation with Mr. Loudon he asked me if I was making an audit or going through the assets, and I said I was working on that; I had been doing something along those lines. I believe I told him I had done such work before, but I don't know that I said I had just finished such a job. I have occasionally in calling on a bank, or sent out to a bank in places [98] where they were friendly, gone over the assets and made reports as to classifying assets in different classes. My first conversation with Mr. Barghoorn about going to Yakima was shortly after New Years. I think it was on the day that I went to Yakima. I don't remember exactly the time of day when I had the conversation with Mr. Barghoorn and Mr. Triplett. I think my last conversation with Mr. Triplett was late in the afternoon because he was signing his letters, and he usually does that about 5:00 o'clock. I went home early and told my wife I was going to Yakima. I left with Mr. Barghoorn on the 6:30 train that night. When I went to Yakima

(Testimony of W. F. Buckholtz.)

I had no understanding with the Board of Directors of the Central Bank. The first money I drew from the Central Bank, if I remember correctly, was the 15th of January. I think it was \$80. That wasn't expense money. The employees were paid twice a month and Mr. Ellis had made out the pay checks. He asked me if I wanted any money, and I said that perhaps I had better draw some, and he asked me how much, and I didn't want to draw more than I had earned, and I just estimated in a hurry that there would be \$80 coming at least, and asked him for that. I drew another \$100 later in the month, the 25th or 26th. From time to time there were substitutions of notes which had been rediscounted for the Spokane & Eastern. I attended to the substitution. I would select from the bills receivable of the Central Bank the notes that were to be sent to the Spokane & Eastern for rediscount. Frequently notes rediscounted by the Central Bank had to be renewed. I handled all those notes. When a man came in, I talked to him, and if there was a renewal made, I made it. The Spokane & Eastern sent those past due notes and rediscounts direct to me after I had been there for a while. The correspondence will show when that commenced. I reached Yakima on the morning of the 6th. I did not pay any attention to items that came into the Central Bank by mail unless it happened to be something in payment of a note. In that case it would probably be turned over to me. I wasn't working on the lines of the remittances received

(Testimony of W. F. Buckholtz.)

by the bank, but I made a practice of looking to see what our statement was every night. I knew substantially the amount of [99] remittances that the Central Bank made to Spokane on 21st January. I didn't see the remittance letter to Spokane. The remittance of \$48,000 didn't escape my attention. I saw on the draft register that this had occurred and I asked Mr. Lemon the nature of it. I saw this draft of \$51,000 on Spokane before it went out. It was a good-sized one and I knew the Central Bank didn't have any money in Spokane to meet it unless they were sending money there for that purpose. I asked Mr. Lemon if we had lost any in Spokane that day and he said no and I understood from that that there was enough going to cover it. I understood that our balance didn't depreciate any, that there was something else went to our credit, because we didn't lose there. I took it for granted that there was a remittance going to Spokane of approximately that size. Thereupon the following questions were put to the witness by counsel for the plaintiff, and the following answers given:

Q. Did you make any inquiry of Mr. Lemon as to what it was, how it happened he had enough to send to Spokane to meet a draft of that size?

A. Well, I took it for granted that there was a remittance of approximately that size going.

Q. Didn't it excite your curiosity at all as to where it came from, that amount of money?

A. Yes, I have already explained I asked him the nature of it and he told me.

Testimony of W. T. Triplett, for Defendants.

W. T. TRIPLETT testified on direct examination as follows: Concerning the figures I was asked about a while ago, I have taken them from the statement of the Central Bank. At the close of business on 24th January, the Central Bank had a balance of \$24,682.58 on our books. Some time during the 25th, we received cash letters and also rediscounts from the Central Bank which were credited to their account, giving them a balance of \$31,704.03 on our books. However, those [100] entries did not all go on the books at any one time. Other items may have been on before that happened, and I don't think you will ever find a balance of \$31,000 on the books at one time. After we had charged up the rediscounts that were past due and had made some other charges of exchange and interest, and two or three fruit drafts, the Central Bank had a balance of \$170.92. I don't think there were any drafts paid on the 25th January, but there were on the 26th. The Central Bank owed us at the close of business on the 25th one hundred sixty-two thousand odd dollars. That included bills payable and rediscounts, and that was \$20,000 more than they owed when Mr. Buchholtz went to Yakima. The Central Bank owed us between \$185,000 and \$190,000 before we charged those items back on the 25th. The amount the Central Bank owed us when Mr. Buchholtz went away was about \$142,000, part of which was secured by Liberty Bonds. The Liberty Bonds had been sold and in place of them we got

(Testimony of W. T. Triplett.)

slow notes, many of which are not yet paid. The character of the [101] notes we held when the Central Bank closed was very much worse than the notes we held when Mr. Buchholtz came over. That occurred in this way: We were in the habit of charging their account with the notes when they came due. It was up to them to make their account good after that was done. It was up to them to furnish us with notes that were satisfactory to us. As time went on, the notes became of a slower nature. They collected some of the better ones and we had up quite a little more money and had to take a slower class of paper for it. The notes became worse in the process of increasing the amount. The notes and other items that were charged back to the Central Bank on the 25th of January were turned over to the Central Bank and have never been in our possession since. They were sent to the Central Bank and so far as we know *them* must have gone into the hands of the receiver.

On cross-examination, the witness testified as follows: \$142,000 of the \$162,000 that the Central Bank owed the Spokane & Eastern was represented by rediscount notes; the balance of it by bills payable secured by notes. The bills payable was a note of the Central Bank & Trust Company in our favor. I am not sure whether Mr Barghoorn was an endorser on it or not. The condition of our account when the Central Bank closed was worse than when Mr. Buckholtz went to Yakima. We had \$20,000

(Testimony of W. T. Triplett.)

worth of Liberty Bonds when he went over and we permitted the Central Bank to sell them and give us a bunch of slow notes. The scheme of improving the Ellis arrangement didn't have time to pan out. At the close of business on 25th of January, the Central Bank's balance with us was \$170. We charged the notes to the bank on that day; they were past due and we had a right to.

On redirect examination the witness testified as follows: I heard Mr. Miner testify that Mr Barghoorn told him that before the blow-up the Spokane & Eastern had gotten \$75,000 worth of collateral out of him. I cannot tell you when the Spokane & Eastern got collateral from him, but the Central Bank was borrowing from us, Mr. Barghoorn had some personal loans in our bank, and his bank in Colville also had some loans. In view of the amount that we were carrying in his interest we thought it only right that he should personally get behind such paper as we were carrying for him. We talked about the matter several times and finally it came to a head one night when [102] Mr. Barghoorn was going away. A paper was drawn up by which he endorsed all the paper we had of the Central Bank, Franc Investment Company, Sikko Barghoorn and the Colville Loan & Trust Company. We got an assignment of his profit in a dredging contract in Idaho. We didn't get anything out of it; the machine finally burned up. That occurred before Buchholtz came to Yakima.

It was stated that Mr. Barghoorn had been a director of the Spokane & Eastern Trust Company since 1908. [103]

There was introduced in evidence a sheet showing the debits against the general account of the Spokane & Eastern Trust Company with the Central Bank & Trust Company from the 3d to the 26th January, both inclusive, such debits being on account of rediscounted notes and cash items remitted by the Central Bank & Trust Company to the Spokane & Eastern Trust Company on the days hereafter shown. The amounts of the notes remitted for discount and the dates thereof were as follows:

January 3, 1921	.....	\$12,304.60
4, 1921	.....	6,000.00
8, 1921	.....	47,127.58
Sold note (Franc Inv. note)	.....	11,000.00
January 11, 1921	.....	21,250.00
Jan. 12, 1921	.....	7,839.91
January 17, 1921	.....	5,250.00
January 18, 1921	.....	2,900.00
January 19, 1921	.....	4,600.00
January 20, 1921	.....	6,100.00
January 21, 1921	.....	5,775.00
January 22, 1921	.....	500.00
January 24, 1921	.....	6,400.00
January 26, 1921	.....	4,900.00

[104]

The cash letters or cash remittances during the same period showing the amounts and the dates thereof were as follows:

Date.	Amount.
Jan. 3, 1921	\$6,663.37
4	3,443.33
5	4,416.35
6	4,429.12
7	4,746.13
8	792.05
10	17,908.41
11	6,138.55
12	637.14
13	6,336.78
14	1,347.14
15	6,918.45
17	6,815.20
18	16,818.37
19	2,974.50
20	3,731.73
21	48,594.60
22	2,449.28
24	3,985.73
25	6,907.41
26	794.96

[105]

There was also introduced in evidence a sheet showing drafts drawn by the Central Bank on the Spokane & Eastern Trust Company in favor of the Seattle National Bank covering remittance letters and paid by the Spokane & Eastern from January 14th to 27th of 1921; and showing also that these drafts were similar to many others in the files of the Central Bank covering several months. The particular items shown were draft No. 2242, dated 13th

January, 1921, for \$1498.40, paid 17th January; No. 2239, dated 12th January, for \$3294.71, paid 17th January; No 2241, dated 13th January, for \$6319.36, paid 17th January; No. 2245, dated 14th January, for \$12,784.77, paid 19th January; No. 2249, dated 17th January, for \$2636, paid 20th January; No. 2250, dated 17th January, for \$566.79, paid 20th January; No. 2252, dated 18th January, for \$17,798.38, paid 24th January; No 2257, dated 20th January, for \$1438.62 paid 24th January; No. 2262, dated 22d January, for \$541.22, paid 26th January.

Sheets were introduced in evidence showing cash letters sent by the Central Bank to the Spokane & Eastern Trust Company containing transfer drafts drawn by the Yakima Valley Bank during the months of October, November, December and January. Those showing drafts for considerable amounts upon the Fidelity National Bank of Spokane and the Bank of California of Tacoma were as follows: [106]

On October 11th, the cash letter contained a draft on the Fidelity National Bank for \$13,000, the total cash letter being \$13,286.25; On October 16th, there appeared a draft on the Bank of California of Tacoma for \$31,000, total remittance being \$33,301.68. On November 15th there appeared a draft on the Fidelity National Bank of Spokane for \$20,000, total remittance being \$22,298.23; on November 22d there appeared a draft on the Fidelity National Bank of \$10,000, total remittance being \$18,302.41; on December 13th, draft on the Bank of California of Tacoma for \$5,000 the total remittance being

\$8,047.89; on December 20th, draft on the Fidelity National for \$8,000, total remittance being \$8510.50; on January 10th there appeared draft on the Fidelity National for \$4,000, the total remittance being \$6041.46; on January 18th there appeared a draft on the Fidelity National for \$11,000, the total remittance being \$16,812.37. [107]

It also showed that the total amount of such cash letters during the month of October, 1920, was \$421,447.31; for the month of November, 1920, \$317,722.18; for the month of December, 1920, \$156,440.67 and for the month of January, 1921, \$151,548.60. [108]

The following letters are those which were introduced in one bunch as Exhibit "7" by plaintiffs. The letters signed by W. F. Buckholtz are all written upon letter-heads of the Central Bank and Trust Company.

Plaintiff's Exhibit No. 7.

Jan. 6, 1921.

W. T. Triplett, Secy.

Spokane & Eastern Trust Co.,

Spokane, Wash.

Dear Mr. Triplett:

(Separate Proposition.)

I am enclosing Franc Inv. note \$11,000.00 endorsed S. B. secured by miscellaneous collateral enclosed, endorsed without recourse.

Don't swear but I want you to take this over and credit account of this bank if you can get it thru. The collateral is all of a slow nature but

there are a couple of mortgages there which are no doubt covering good values and will add something.

I figure that you are not banking on the C. B. & Tr. Co. endorsement anyway; you have got an overdraft and will have. You have S. B.'s guaranty and are getting his assignment on dredging profits and in general it is his personal credit to a large extent that you are considering.

As it stands, you have an unsecured overdraft, by taking this over without recourse. I'd say it is not making it any worse and needless to say will help the situation here immensely. I take it the dredging operation has been thoroly explained and if that pans out as expected, S. B. will lift all his personal stuff there and on the way down here he said he expected some substantial returns on that during February. He of course has some scattered debts to meet, but all of it won't need to be paid immediately.

I am doing this on my own initiative—not at the request or suggestion of S. B. or anyone else, and I hope you will plug your darndest on this.

Yours truly,

(Signed) W. F. BUCKHOLTZ.

1-7-21.

W. T. Triplett, Secy.

Enclosed are the following notes:

J. H. Ames.....	\$170.00
J. D. Bridges.....	200.00
E. F. Burnell.....	225.00
J. F. Dukes.....	167.00

Don't swear.

Earl Hughes	217.00
H. Moller.....	70.00
Chas. E. Perry.....	225.00
Curtis E. Pierson.....	100.00
Lambert Parrish	60.00
N. B. Strew	120.00
John Wagner	56.40
F. H. Fischer.....	
End. Fred S. Ross.....	3318.00
S. Coburn	3000.00

Total 7928.40 All endorsed
by bank.

[109]

All but the last, you will observe are Ross & Fischer premium notes, with 3318 direct.

I am going to insist on Ross taking up the premium notes at maturity if they are not promptly paid, as he has other connections to raise the money and should relieve us of all he can knowing the situation. The \$3318 note is a consolidation of several on which interest and \$700.00 was paid on principal today and I can't say it will be paid at maturity. Ellis did this while I was out and I don't know if they agreed to clean up at maturity or not. We have no financial statement, but Mr. Rutter likely knows pretty closely and personally. I'd say they are better than Jaynes & Wardell. We want you of course to charge them up at maturities—Joke—we might have a balance by that time. I am just trying this out and see what you think of it.

You have some of Coburn stuff and statement. Ellis says this note will absolutely be paid at maturity out of his commissions on apples which surely will be in by that time. I have been over to Coburn's place. This is not bad stuff and he really is in a good conversative business and had margin of liquid capital in business. Not a gambler. Has had lots of experience in the line and has always been more or less successful altho too conservative to ever make a killing.

We will know in a day or two if the sale matter goes thru. They are going to get together tomorrow P. M. S. B. will leave for Spokane tomorrow night unless they ask that he stay altho he has given Ellis power to close deal.

Yours very truly,
(Signed) W. F. BUCKHOLTZ.

Our OD with you increased about 1000 at this end to-day, not counting any of my notes charged up as yet.

January 8, 1921.

Mr. W. F. Buckholtz,
c/o Central Bank & Trust Co.,
Yakima, Washington.

Dear Buck:

The Executive Committee talked over the \$11-000.00 note of the Franc Investment Company this morning, but were not favorably inclined towards taking it. They feel that you have other paper down there which is more liquid, and which comes nearer measuring up to our standards.

We have great confidence in your ability to pick out the kind of notes we want, and will ask that you work along those lines instead of asking us to take the Franc note. I did my darndest to get it over for you, but the powers that be could not see me "for dust."

Referring to my letter in regard to liberty bond notes, it may appear to you that Mr. Barghoorn cannot borrow \$22,000.00 from the bank there, and I guess in the last analysis that is right, but we talked the matter over with the Bank Examiner, and he told us to go ahead and handle it that way, namely: giving the bank there two notes, one for \$20,000.00, and one for \$2,000.00. They to discount the large one thru us, and keep the other one in their pouch; the large one to be secured by liberty bonds, aggregating \$22,000.00.

Nothing new on the horizon to-day.

The account of the Central Bank & Trust Company is overdrawn to-night \$7,434.79. Of course, we want to get this covered at the earliest possible moment. [110]

After writing you last night, I found your pencil memorandum on the makers of the various notes, and we are even better suited with the notes after seeing that than we were by merely looking at the statements.

Sincerely,

W. T. TRIPLETT,

Secretary.

W.

January 8, 1921.

Mr. W. F. Buckholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

On looking over our records I notice that a lot of apple drafts for which we have given the Central Bank & Trust Company credit are unpaid, and that in a number of cases more than two months have elapsed.

I wish you would see the makers of these drafts and ask them to give you checks for the amount so that we may clear them from our records, and enter them for collection. I do not expect your bank to put up the money, because I can understand conditions there at this time, but I do think that the people who drew the drafts should "come through."

In this connection, I wish you would instruct the tellers there not to accept any more drafts drawn payable upon arrival of car, except for collection. These arrival drafts are the bane of our existence, and the Bank Examiner is making it rather warm for us on account of the delay in collection. We had a notice to-day that one draft for \$1,141.35 which has been outstanding for some time is unpaid, and that the bank is unable to get any satisfaction out of it. This is being charged back to your account, and I think you had better do likewise with your depositor. He should sell the apples or make some arrangement whereby the draft

can be taken up without any further delay.

Sincerely,

W. T. TRIPLETT,

Secretary

R.

January 9, 1921.

R. L. Rutter, President,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Rutter:

As already advised, we all feel that the withdrawals have terminated, and I am more confident to-day than ever that we can get by and liquidate our indebtedness within 90 days, provided of course that the products held here will sell at all at reasonable figures. It is not so much a matter of holding for better markets but a matter of light demand temporarily. We of course all hope to make the sale and Mr. Ellis is firmly convinced it will go thru, but not depending on that and the benefits to be derived immediately, we face the task of liquidation to the limit or bringing on as much pressure as it would be good policy to do without creating a feeling of uneasiness among depositors, whose ears might hear the talk of disgruntled borrowers.

[111]

What I want if possible is for you to use your influence towards keeping the examiners away from here for say 30 days. I saw McBride in town one night and expected him in here that following day, but he didn't appear and I think he went out for Sunday. We are getting along fairly comfort-

ably; needless to say, we are busy—busy is no name for it. It would greatly inconvenience us at this time, and would delay such collection progress as we may be able to make. Then too, customers will see them at work in here and that gives another possibility of starting withdrawals, which we don't like at all. As for myself. No one has gotten curious,—I am a new man working in here in Van's place, who just left the first.

You will see my argument. The examiners would do the situation no good whatever and it has possibilities of resulting in disaster. I will greatly appreciate any influence you may have with the department.

Sincerely yours,
(Signed) W. F. BUCKHOLTZ,

Jan. 9, 1921.

W. T. Triplett, Secy.,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Trip:

Subject: Apple drafts.

I have your letter of yesterday advising that you are charging back a draft of \$1,141.35 which was drawn 10-25-20. This was drawn by E. S. Small on H. L. Tonnes Co. Detroit, *Minnesota*. That all right. I will get Small in here to-morrow. Tonnes wrote Small that the apples were fine. He has them unloaded and wants more. It seems Tonnes put up bond to RR. Co. to get unloaded. He wrote Small that he would have absolutely nothing to do with the First Natl. who hold the

draft and asked Small to send his drafts to the Detroit State Bank and he would pay them. We wrote the First Natl., to turn over collection to Detroit State but it seems they won't do it; this might do it, but to make sure, I will have Small draw a sight draft on Tonnes, which we will mail direct to the Detroit State Bank for collection with instructions to wire results and if paid we will wire First National to surrender B/L. We should get this one cleaned up within six days and it cuts down the "On Arrival" stuff to \$5500. If you can possibly carry this a week or ten days longer, I sure will appreciate it, but on the other hand if you get this loan matter fixed so as to give us a balance, it won't be so bad to charge us and you do what is best for both ends. You understand it will force loans on our books to that extent until returns are received. The shippers have no money on hand altho they are waiting for returns on a few items sent for collection. When the S. & E. and other banks stopt handling these on arrival drafts, it forced the shippers to check out their balances on accounts they had to pay and not getting credit on any more run them out of cash. Then apple shipments stopt, until demands for late apples comes on. There you have the situation.

On the December float which is now less than \$15,000, with likely some credits since, I am not alarmed or worried over. These as you know are at sight and payments have been good. Some of this hasn't had time as yet. You might mention to Mr. Rutter that your risk on the apple drafts

vs. United States Steel Products Company. 151

in transit is not bad, not nearly as bad as it might be.

Keep writing me. I like to hear from headquarters.

Very truly yours,
(Signed) W. F. BUCHHOLTZ.

P. S.—We have already stopt giving credit for on arrival drafts. [112]

January 10, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Your account has been charged \$329.89 to cover the discount on the notes aggregating \$39,199.18 which we took for your account a few days ago. Enclosed is a memorandum showing the details.

Sincerely,

W. T. TRIPLETT,

Secretary.

R.

Enc.

1-10-21.

Mr. Triplett:

I couldn't find my copy of the reports on the notes I sent you as collateral anywhere in the bank this morning and that possibly I had enclosed both copies. Will you see and if so return one copy at once?

It might have been picked up by someone and carried away or the girls may have destroyed it.

I should hate to think that someone on the outside might have gotten it and it bothers me.

The bunch of employees here don't amount to much outside of Lemon the assistant cashier or to be, and the old maid who keeps the savings books and window. I am very much disappointed in Elting. All he thinks about is getting through the day and getting out. He takes no interest in anything and during all these years has learned nothing in general. He is paying teller and on quiet days has time to do such work as reconciling accounts or other details but he don't know the first thing about starting on it. He is married and lives beyond his means, his account is overdrawn over \$100.00 and he doesn't seem to be able to catch up and get it covered. I always thought he was good material but it is a case of lack of pep or ambition; doesn't even know enuf to keep his mouth shut on the outside.

Ellis allows Elting and Smith and the other teller to overdraw almost continuously; there are shortages of over \$1000 for the year unfound. Van is into the bank for about \$180 that we know of and in all there is such a lack of organization and efficiency that I get so disgusted that I would like to fire the whole gang out of here and get new people, all except Lemon and the old maid. Stuff lying around all over thru the night that should be locked up, bunches of uncanceled checks lying out and all such stuff as that. Two of the other four girls are good material and with a little strict discipline could be developed, but what else can you expect of

a ship without a captain. It would not be wise to make any changes just now of course and we will have to poke along but I see a way to get along with one less man and if it turns out that no sale is made and I am to remain here very long, I am going to relieve one employee or give him notice to get another job. Haven't decided on who it will be. In fact, if business doesn't pick up and deposits remain below \$500,000 we could weed out two of them if the others would spruce up a little. It's a sad sad story all around and we have to make the best of it. In my opinion, Mr. Barghoorn made a good buy when he took this over, but he didn't get the right man in here. It's too bad. The big borrowers didn't need to be taken on at all. The borrowers are not depositors. We have any number of little business accounts who bring in small deposits every day. Besides that we have a lot of working people and small farmers. The Japs are mighty thrifty and successful and good depositors and there was no necessity to loan to them so much, altho I have confidence in all of the Jap loans. This bank instead of being in its present shape ought to be buying commercial paper from you and keep you busy supplying it. The force could be cut down somewhat and the institution would make very good profits even if deposits remained at \$500,000, or less, in less than two years it would earn enuf to charge off everything slow. The deposits would come [113] automatically. These little concerns aren't going to run away over to other banks to make their deposits and there is lots and lots of

this little stuff around here. If you could collect in what a dozen large borrowers owe you would be on easy street, and the whole situation is due to the past nine months management. I admit that it looked as tho deposits would go over a million but that didn't justify taking on all these big borrowers. The money wouldn't burn up and could just as easily all be invested in commercial paper instead, but there's no use crying about spilt milk; there is lots of it spilt and we have to mop it up the best we can.

I tried to call you to-night but couldn't get you. Nothing in particular, only I was anxious to know what had been done on the liberty bond matter and substitution of notes as collateral; also to give you the news of our raise in deposits to-day of \$13,000.00 with \$9000.00 in clearings for morning, but Bargy will be here in the morning and he will have something to tell me. Say S. B. is a prince. You did not begin to do him justice when you were talking to me. I have just begun to get acquainted with him.

(Signed) W. F. BUCHHOLTZ.

January 10, 1921.

W. T. Triplett, Sec.,
Spokane & Eastern Trust Co.,
Spokane, Washington.

Dear Sir:

To assist Mr. Blake in checking up collateral the following is now in my possession as agent for the Spokane & Eastern Trust Company:

On collateral note of J. J. Blood \$450.00, par value Liberty Bonds various issues.

On the collateral note of O. A. Clark I have a real estate contract signed by Geo. Cry with an unpaid balance of \$1110.00, total purchase price of the property being \$4000.00.

From Ira Cardiff collateral note I hold certificate of stock, 87½ shares Washington Dehydrated Fruit Company of \$8750.00. This certificate was not endorsed by Mr. Cardiff nor have we hypo and the next time that I can get in touch with Mr. Cardiff, it will be fixed up.

On the J. E. Knight collateral note I hold Pacific Dearborn Co. warehouse receipts on the two Clydesdale Trucks, together with insurance policy for \$5715.00, loss payable to Central Bank & Trust Company.

On the Shields-Livengood rediscounted note of \$2500.00, I hold their own warehouse receipt on a National Sextet Touring Car, in their Seattle warehouse, wholesale cost \$4200.00; copy of the receipt, which is in reality a trust receipt, is enclosed. Mr. Ellis says that there is no doubt but what this car is covered by insurance, but the policy is not in our possession. I will try to get this from the manager here as early as possible.

Enclosed is hypo signed by Central Bank & Trust Co., in connection with our note to be secured by customers notes; I neglected to enclose it when I sent the notes.

Yours truly,

(Signed) W. F. BUCHHOLTZ.

January 10, 1921.

W. T. Triplett, Sec.,
 Spokane & Eastern Trust Co.,
 Spokane, Washington.

Dear Sir:

Please send me the following notes, sent you in the batch of \$40,890.21, to be held as collateral; after your collateral department has made his records:

B. L. Blood	\$ 450.00
Farmers Produce Co.	2861.50
P. C. Foster	200.00
Jose E. Frisque	300.00
R. A. Gray	1000.00
H. Z. Honda	3000.00
Shields-Livengood Motor Co. ...	2500.00
N. D. Warwick	1654.49
Conrad Weiss	1486.39
Wapato Construction Co.	2500.00

I would like the original notes here for collection in case the borrowers should happen in.

Thanking you, I remain,

Yours very truly,

W. F. BUCHHOLTZ,

(Signed) W. F. BUCHHOLTZ.

B/H.

1-10-21.

W. T. Triplett, Secy.,
 Spokane & Eastern Trust Co.,
 Spokane, Wash.

Dear Trip:

We had a nice day to-day with a gain of \$13,000 in deposits which includes a cashiers check of

\$5000 which will be in in about a week. Our remittance to Spokane totaled \$17,907 of which \$3169 is sight apple drafts, balance regular bank checks.

Collected only a little small stuff which didn't amount to anything and Ellis took E. S. Small's note temporarily for \$5250 to take up some old charged back apple drafts which have been laying around here for some time and then credited back and carried as cash items for another 10 days or so. It is hoped that we will get some credits on some of the drafts and others he has to arrange to re-sell. I don't think Small could get the money elsewhere, altho Ellis didn't go into that with him. This bank has carried him and he does all his business here. Of late his balances haven't been steady altho he is still selling stuff occasionally and now and then makes a good deposit. Has lots of fruit and money due him on shipments tied up and when it all gets in Ellis thinks he can easily clean up here.

The S. & E. account hasn't been reconciled for December and I haven't had time to get at it, but if nobody gets to it to-morrow I am going to try to do it myself. We don't know how we stand closely. We should have a credit balance without the loan for a little bit anyway. As stated, we got Small to give us sight draft on that Tonnes car which we sent direct and charged to sundry banks, credited S. & E.

I am not sending any notes to-night, and in fact am going to quit early for a change. I am won-

dering what you thot about the notes I sent, but will hear from you to-morrow.

Sincerely yours,

(Signed) W. F. BUCHHOLTZ. [115]

January 11, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

I am enclosing a list of the fruit drafts outstanding. You will notice that some of them are a hundred years old, more or less. They are the bane of our existence, and while Ellis and some others may blame us for not taking them, there was absolutely no way under the sun we could use them, and we are sorry we did not clamp down the lid sooner than we did. Four or five of those should be gotten out of the way without delay, and I am going to ask you to do a little work looking toward that end.

If the Associated Fruit Company does not want to pay its drafts, then it is up to the people at that end of the line to take them up and handle for collection. Friend Bank Examiner, who has been with us for about a week, certainly is laying on us hard for permitting you to let them stand out so long.

Sincerely,

W. T. TRIPLETT,
Secretary.

R.

1-11-21.

W. T. Triplett, Sec'y,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Trip:

Kindly charge our account with the L. W. Adams \$400.00 rediscount reduced and renewed for \$350—30 days—history enclosed.

I am enclosing the new \$350.00 note for rediscount again, together with new note of C. A. Rhoades for \$900.00, for which if agreeable kindly credit our account. New statement on Rhodes enclosed.

As per your letter of the 10th, we are crediting your *your* account with \$329.89 to cover discounts on the \$39,199.18 batch. Our remittance to you today again was good and taking in consideration the float of our drafts, we should have a credit balance. Lemon and Smith are working on the reconciliation to-day and we hope to find out how we stand by to-morrow.

Enclosed is statement 1—1—21 of G. E. Friesen whose note you hold as rediscount for \$2000.00 the total amount he owes this bank at this time. See information attached.

Yours sincerely,
(Signed) W. F. BUCHHOLTZ.

P. S.—Mr. Barghoorn arrived this P. M. and tells me he signed the \$20,000 liberty bond note and we are making the corresponding entry. I have as yet no answer on the 40 odd thousand collateral

notes sent you, and whether you will see fit to put thru a credit immediately.

1-11-21.

J. L. Campbell, Comptroller,
S. & E. Tr. Co., Spokane, Wn.

Dear Mr. Campbell:

I believe the S. & E. is relieved of my salary from the day I left and you [116] likely have a small credit due on the 15th for the first few days of January and whatever it amounts to. Wish you would credit my check account on that day and mail slip of it to Mrs. W. F. Buekholtz at E. 20 5th Ave. Spokane in order that friend wife may know the amount.

Hoping that everything is progressing to your satisfaction.

Sincerely yours,
(Signed) W. F. BUCHHOLTZ.

P. S.—We have lots of work and things to think about.

1-11-21.

Dear Mr. Triplett:

I happened to run on to your letter of 1-3-21 asking for statements on C. H. Ashman and Richard Frederickson. Neither of these people have been in and the following is the best I can give you at present.

C. H. Ashman is a tenant of S. S. Busch on one of his irrigated tracts. The note is also signed by Busch which adds strength. Ashman has a small equity in a piece of land, which together with mis-

cellaneous chattels likely would show a net worth of \$3000.00. They have on this place about \$2000.00 worth of clover seed out of which the note is to be paid. The clover seed market is dull at present as there is little demand for it at this time of the year. We don't know if insured or not, but as soon as I can get one of them in, will send you further details.

Richard Frederickson owes this bank \$2333.40 all of which is rediscounted with you and due 2—6—21. He has an equity in a place of about \$3000.00. This loan is secured by cha. mtg. on some equipment, together with his 1920 crop which consists of 100 tons of hay and 40 tons of spuds. Yesterday some hay was loaded out at \$17. A dealer told me some went out at \$18 last week. The lowest sold to my knowledge was \$14. Figuring the hay at \$14 and the spuds at \$20.00—(I don't know or haven't heard what spuds might sell for at this time) there would be hardly enuf to clean up, but there are good chances of getting better than \$14.00 on the hay. I am writing Frederickson to-day to come in here and we will see what we can do about selling the hay immediately, and will advise you of any developments.

Sincerely yours,
(Signed) W. F. BUCHHOLTZ.

January 12, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Thank you for your letter of January 10 enclosing history sheet on H. C. Davis. The old boy is one of those hardboiled fellows who believes that the only province of a bank is to lend money; that as long as a man is good there is no use asking him to pay up; and that deposits in connection with a loan are out of the question, for a man would not borrow if he had any money to keep on deposit.

He is largely responsible for getting a bunch of loans in the pouch signed by persons who carry no balances with the bank. I think he is a big drawback, but on the other hand you need him in this crisis and it would not be well to press him too hard. I think you ought to make him understand he is not to be a continuous borrower, but is to pay up whenever he sells any stock or any [117] produce, and borrow at other seasons.

He is just as you described him, a first class politician with a lot of influence, and particularly in the livestock lines.

Sincerely,

W. T. TRIPLETT,

Secretary.

R.

January 12, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

You have the C. A. Rhoades matter sized up exactly right. Mr. Rutter thinks that you handled it in fine shape. He is not the kind of a man to press for payment. He owes you such a small amount in comparison with what he received for his products, that you would be foolish to go out and force collection.

On the other hand, if his produce was only worth \$5,000 and he owed that amount you should go out and put on whatever pressure is needed to secure liquidation. The kind of people you should get after are those who are continuous borrowers, and who will have nothing left to deposit after their loans are paid. The chances are they will be applicants for new money within a very short time, and the only way to circumvent their requests is to ask them to pay up and go elsewhere.

Regarding Ashman and Frederickson—I think you had better watch them carefully and see that you get returns if the crop is sold. Otherwise, they will be inclined to pay other people, use the money for expenses, and do everything else other than pay the bank.

It is entirely satisfactory to us to handle the L. W. Adams renewal and C. A. Rhoades note. Your account has been credited \$1,237.70 to cover

the new notes, and charged \$399.77 to retire the old note of Adams.

We are pleased to learn that things have quieted down and that deposits are running along in the regular way. I am not so sure that the withdrawals are all the result of uneasiness on the part of the depositors. Nearly all Spokane banks have had some decrease in deposits since the first of the year, due to the fact that a good many people who have savings deposits have bought bonds or moved away, and they were just leaving the money here until interest was credited up. Our own deposits have shrunk a whole lot since you left, and we are congratulating ourselves that they have not slipped even more.

Sincerely,

W. T. TRIPLETT,

Secretary.

R.

1-12-21.

Mr. Triplett:

Deposits to-day down about \$3000.00. Regular run of stuff. Nothing in the way of withdrawals of accounts that amounts to anything. Just a day when nothing large comes in.

Cash collections of notes net, only \$600.00. [118]

Everybody appears to be calm, business quiet and nothing exciting occurred: Few cars of hay being loaded out every day but demand weak. Geo. Cyr made an appointment to see me to-morrow. He is a borrower on haps, you have him. In the mean-

time he is going to feel around on the market a little. Will advise you results of our conference tomorrow.

W. F. BUCHHOLTZ.

(Signed) W. F. B.

P. S. —How is Wienss getting along? Selling any wheat? Is the Omah situation doing anything?

1-12-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Trip:

Thanks for informing me as to the telephone rates after midnight. I didn't know this and it may be of considerable use to me.

If you should be having a night session at the bank or be there after midnight and have anything of importance to tell me about, you might call me Room 553 Commercial Hotel and I can talk where it is quiet and not a lot of people around to hear me. It is usually about 12:15 before I get to my room—I don't mean that I am usually in somebody else's room until then. I don't want you to misconstrue my meaning, that's all, as I am usually down at the bank until 11:45 and then mail my stuff on the night train.

Sincerely yours,
(Signed) W. F. BUCHHOLTZ.

1-13-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Trip:

In regard to financial statement from Ross & Fischer: Ross just got back from Ellensburg and I saw him in the lobby of the Commercial this evening.

He says they are closing up their last year's business and in a few days will have the desired statement and I will forward you a copy when I get, *keeping after them* in the meantime.

Ross also says they expect a check of \$5000.00 in a few days and it is quite possible that they will take up the note at that time, realizing the situation here. I also had a talk with him about taking up past due premium notes and made favorable progress on that. Enclosed is copy of J. D. Bridges statement of to-day. You hold his for \$200.00 end R. & F.

Sincerely yours,
(Signed) W. F. BUCHHOLTZ.

1-13-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

Enclosed is renewal of Geo. L. Cyr hop loan for \$5250.00 for 60 days, to [119] replace two notes rediscounted with you aggregating \$5200.00.

The enclosed history sheet and new statement tell the story. This might be prepaid as Cyr is anxious to sell as early as possible but I made it 60 days as it might take that long for a market to develop.

As per our conversation, I could have split this up, making one note absolutely secured with large margin and the other not, but you know how it is with us at this time. It's like an old girl at 60—what is the use?

Sincerely yours,

(Signed) W. F. BUCHHOLTZ.

P. S.—Received credit memo for L. W. Adams renewal and C. A. Rhodes \$900, for which thanks. I am glad my action on these met with approval. One of the Cyr notes was here for collection; the other has not arrived. Please cancel and send it if it's not already on the way.

January 14, 1921.

Mr. F. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Your letter of January 12 in regard to the Small drafts is received, and we are not altogether satisfied with the situation. It seems to us that in view of the length of time these drafts have been outstanding, he ought to sell the apples on the open market if the Associated Fruit Company is not going to take them up, and let us clean the slate.

In lieu of that it will be satisfactory to us if you can scrape up enough rediscounts to take the place

of these drafts and let us enter them for collection. We don't want them outstanding much longer. We all feel that there is going to be a good sized loss on Small, and the sooner we get things in shape the better. The apple market, like everything else is slumping, and the longer you wait the greater the loss will be. In our experience the man who gets in first and secures his money comes out on top, and the man who dilly-dallys along comes out at the small end of the horn.

That has been the trouble over there in Yakima. Instead of going after their borrowers last September as per our suggestion, they were too much inclined to listen to the borrowers' tale of woe and his optimistic views as to higher prices, instead of using good judgment.

Sincerely,
W. T. TRIPLETT,
Secretary.

R.

January 14, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Whose receipt does the County Treasurer hold for the Liberty Bonds which were forwarded for conversion? If it is issued by the government or you have a form of receipt from the Federal Reserve bank for it, we see no reason why we should not trade you \$10,000 worth of Liberty Bonds for your receipt, and hold the latter until returns are

received, provided the bank will give us a written agreement to turn the bonds over to us as soon as they arrive.

Sincerely,
W. T. TRIPLETT,
Secretary. [120]

R.

January 14, 1921.

Mr. W. F. Buchholtz,
Care Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

To-morrow your account will be credited \$40, being your salary for the first six days of January and a duplicate of the deposit will be sent to Mrs. Buchholtz, as requested.

We have had the examiners with us ever since you left, you no doubt know, and we seem to have enough work ourselves to keep us busy. I haven't heard of anyone looking around for something to do for some few days.

Sincerely,
J. L. CAMPBELL,
Comptroller.

JLC: MS.

1-14-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Washington.

Dear Mr. Triplett:

Nothing new to report to-day in particular. We had a regular day although our deposits dropt

about \$8000.00. This is not a large fluctuation for the volume we handle, but the trouble is there are more downs and ups. Didn't collect anything to speak of to-day although got some statements and made a few renewals.

Woodcock will likely pay us \$1500.00 to-morrow or Monday, which he said he would. This however, is full payment of a note held in Seattle. You can put considerable confidence in the paper with his name on it, of which you have \$12,000. His turn over of cash is good and he deposits bunches of checks which would make you think he was in some business in town. He did not put all his assets in his statement and he is believed to be worth a half a million and not all his assets are of a slow nature either; in fact, we could get every cent on the paper he is on as he can get it elsewhere anytime, but you see he is not only on the board here but is one of the substantial fellows in the bunch of prospective purchasers. In spite of this, you can be reasonable sure to get some money at maturity from him; in fact Ellis says he will pay all of it.

You mentioned the Grangers Whse. Co. \$6000.00. I agree with you that the load is too heavy but likely you were under the impression that this business is conducted in Granger which is not the case. It is in the same block that the bank is, and consists of general mdse. and produce business, owned and operated by a bunch of farmers.

Keep writing me. It's great to hear from home. It strengthens my morale and it is indeed a pleas-

ure to pause for a moment thru the day and open and read them. I am going to use you all I can in this work, and knowing that you have plenty of other matters to look after, I appreciate the time you give me.

Sincerely yours,

(Signed) W. F. BUCHHOLTZ. [121]

1-14-21.

J. L. Campbell, Comptroller,
Spokane & Eastern Trust Co.,
Spokane, Wn.

Dear Mr. Campbell:

Please send us a statement of our account with you with vouchers up to date, and from now on have them sent twice a month, on the 15th and last.

Two of the boys have been working on our reconciliation of account for several days and as yet not reached a balance. We hope to get this completed soon and will send you return sheet. Unfortunately a great bunch of stuff consisting of charged-back apple drafts, costs on these, wires, collection and exchange charges, etc., etc., have run on without attention for so long that it nearly necessitates the employment of an expert to ferret out all the differences.

Thanking you, and with personal regards,

Sincerely yours,

(Signed) W. F. BUCHHOLTZ.

P. S.—Since writing the above I have watched the boys work on it for a little and I see they have a lot of December stuff to check up as yet. Until

further notice, I wish you would have someone enclose a slip of our balance each night until we get it straight. I can then estimate outstanding drafts and other large items and get some idea as to how we stand from day to day.

January 15, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Referring to your letter of January 13—I am not altogether sanguine about the Rhoades matter. The price of apples is something yet to be determined. My thought in writing you was that if the value of the apples was very little more than the loan, there was not much use in taking chances and mincing words; but if the price of the apples exceeded the loan several times over, as it apparently did, you would have been foolish to go after the loan.

The trouble with apple dealers, hop dealers, and any other dealers that we know anything about, is that they are hoping against hope that the price is going to increase or continue where it is. They are merely kidding themselves. [122] The price of all products is on the down grade. After the Civil War values declined steadily for thirty years. You know what happened to what this year. The apple men have been fortunate so far in that the price has not slumped proportionately as much as other products, but our friends in the Wenatchee country tell us the market has quieted down

to a whisper, and that it is next to impossible to get a bid on any amount of apples. This is the beginning of the slump. A banker should advise his customers to sell their products and get out from under the load.

This goes for Cyr as well as anyone else, although in Cyr's case you want to get all you can out of his crop. At the same time, you don't want to let the market slide out from under him. We have renewed the Cyr note, but shall expect it paid at the next maturity.

I think you can understand our position in the matter, and while it may appear a bit arbitrary to you, these things will hang on for ages if somebody does not put on the pressure that is necessary to get results. The trouble with all of us is (and this goes for me as well as anyone else) when we get among the farmers and see the actual produce, we are inclined to take their viewpoint because we can see the stuff and know something of the value. On the other hand, conditions are entirely different this year than ever before. We are on a constantly declining market from which there is little prospect or hope of recovery for some time. The tight money market alone would tend to hold prices down if no other feature entered into it. There isn't enough idle money in the world to buy any great amount of products and all purchases are on a week to week or hand to mouth basis. The butcher, the baker, the candlestick maker can't see over a week or ten days in advance. Consequently they don't lay in the supply of goods they formerly

did and are buying in driblets. You know what that means. When any of your borrowers begin to talk about holding for higher prices it would be just as well to turn a deaf ear to their appeals.

As regards H. D. Smith, it is all right for him to talk about relieving you of his loans in case you get uneasy, but unless conditions in Yakima are entirely different from what they are any place else, he will not find it so easy to make good on his promise. Apparently he is sound and in good shape, but when a man talks about going across the street and borrowing money to pay another bank he does not know what he is talking about in these days. All the banks in Spokane have had attractive business put up to them if they would lend money to pay off some other bank, but when it came to a show down they did not get the money.

We thank you very much for the \$2,500 he paid and for letting Herb continue to carry his part of the load.

Sincerely,
W. T. TRIPLETT,
Secretary.

R.
Enc.

January 15, 1921.

Mr. W. F. Buchholtz,
Care Central Bank & Trust Company,
Yakima, Washington.

My Dear Buck:

Enclosed you will find statement of account of the Central Bank & Trust Company, as of the close

of business January 14, and as requested, we have placed your name on our mailing list and hereafter you will receive a statement of your account on the fifteenth as well as on the thirty-first. I have also asked Miss Cannon to furnish me daily with a memorandum of your balance and I will endeavor to see that you get it all in due course.

You certainly ran up against a mess all right but after you once get it straightened out and know where you are, it won't be so bad. The party who [123] was in charge of the reconciling end of it I am sure cannot have given it much time or else it would never have been in such shape.

Sincerely,
J. L. CAMPBELL,
Comptroller.

JLC: MS.

1-15-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

I note that Chief Snider is still marking the collection slips on rediscounts sent me for collection as follows:

“Will charge your account at maturity.”

You advised me that this would not be done, and I hope it will not be. I am very anxious to keep our account intact and if rediscounts are charged up in this way, it just simply can't be done as it requires time to get these items renewed or collected.

If O. K. be sure and see that Chief doesn't do it.

Yours very truly,

Sincerely,

W. F. BUCHHOLTZ.

(Signed) W. F. BUCHHOLTZ.

P. S.—Mr. Barghoorn left for Spokane this P. M. and he can give you late information. WFB.

January 17, 1921.

Mr. W. F. Buchholtz,

Central Bank & Trust Company,

Yakima, Washington.

Dear Buck:

Enclosed is a copy of our entry in connection with the H. D. Smith payment of \$2,500.

I do not know whether you adjusted the interest or not, but this will give you an idea as to what was done.

Sincerely,

W. T. TRIPLETT,

Secretary.

R.

Enc.

1-17-21.

W. T. Triplett, Secretary,

Spokane & Eastern Trust Co.,

Spokane, Wash.

Dear Mr. Triplett:

Collateral notes only.

Enclosed find renewals as follows: (Original notes.)

B. L. Blood \$400.00, secured by U. S. bonds par

\$450.00; note due in 30 days with authority to sell at maturity unless taken up by them. [124]

H. Z. Honda \$3000.00. Chattel mortgage hotel furnishings.

The P. C. Foster \$200.00 note held by you as collateral was collected in cash today. I have not made entry to give you this and with the \$50.00 reduction on Blood cuts your total collateral down to \$29,966.72 as it stands, but I have a couple more entries to make on collateral notes, people in after hours and tomorrow will send you something more to cover. It is necessary that we substitute other paper for collateral notes collected at present which I trust is agreeable.

On the above B. L. Blood note, I am retaining \$450.00 in liberty bonds for you. Blood begged so hard and assured me that he had money enuf coming to pay this note in full and keep his bonds, that I allowed him another 30 days. If he doesn't come thru by maturity I will forward the bonds to you for sale. He expects to get some money in about ten days, but I think it's bunk and if he doesn't, it is understood that we sell the bonds without further negotiations.

Yours truly,

W. F. BUCHHOLTZ,

(Signed) W. F. BUCHHOLTZ.

P. S.—Honda couldn't pay anything more than interest this time but assured me that by next maturity would make substantial payment. It is possible that he is helping some of his Jap friends and I am going to watch his account.

1-17-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wn.

In General.

Dear Mr. Triplett:

Thank you for your general letter of the 15th.

About that fellow Rhodes, I agree with you. I'd sell enuf now to clean up even tho I had \$10,000.00 worth of apples and owed only \$900.00, but with Rhodes it is different than many others. His stuff is 75% extra fancy, in good shape and size. He told me he could get \$2.00 but on account of having such good stuff felt he could afford to wait a little, especially since his indebtedness was light. But, you take some of the other fellows who have 5 tier apples and C grades and poorer, they haven't any offer at all for any amount. These are the birds that I think should take what they can get as early as possible; in fact every borrower whose ratio does not show a large margin and owes considerable, should not wait one moment.

You take the hop fellows. Right now there is practically no bid for hops. Such brokers as have connections for handling are on the lookout for hard-up hop growers and want to buy at 25¢ and speculate, but from what I can learn from a number of sources, it is reasonable to expect a market in 30 to 60 days. The First National has some hop paper; they don't expect anything on it until March and by the way, they are a long ways from being on easy street themselves with steadily de-

creasing deposits, altho they hope to get a good boost in March. I haven't bumped into many fellows as yet who are standing us off on the idea of holding for better markets, but in many cases there is hardly a market of any kind on some things. It is true that a little stuff of all kinds is being shipt out right along, but the volume is sickening, and we are all hoping that the apples will clear out during the next 60 days. Altho I expect to keep pounding along getting what I can, I don't expect to do any great volume of liquidating until February or March. I am figuring on from \$100,000 to \$150,000 out of hops and apples during the next 90 days. If these two items don't move, we are going to have some mighty hard sledding and it won't be this bank alone.

With reference to H. D. Smith with whom I am getting pretty well acquainted, as [125] he lives at the hotel, he did not say how he would pay if we called him. I think he would sell. You know he is a buyer for Cohen & Co. of Chicago, has some capital of his own, and this business is on his own account, and I am inclined to think he knows where he can sell his stuff and what he can get. Altho, I admit this is speculation, he is not the rank kind that Eddie Small is, and doesn't load up with more than his capital will comfortably handle. He told me that he could sell at 20¢ profit over all costs on what he has in storage, but that it was too early to sell the quality of stuff he held. He says the outlook on small and inferior stuff is not encouraging, but that he was in close touch with the

Chicago people from whom he gets night letters every day and that he wasn't losing any sleep as far as his personal business was concerned. If his account didn't amount to anything, I'd sure put on the pressure but he always has a balance which usually commensurates with his borrowings, and if any items come back the money is there to cover, and in fact I might add that it is a pleasure to transact business with him, and I am not doubting that by the end of 60 days will see him cleaned up, which is a lot more than I can say of some others.

I don't want you to feel that I am drifting off into an alley of that which might not do this situation the most good and I agree with you to the letter on the several subjects touched on, but what did the wheat fellows do when there was absolutely no bid whatever for a short period. There was nothing to do but wait until buyers did come back on the market. Moss of Fairfield told me that for a week or so they couldn't sell wheat for 50¢ a bushel; that there was no bid at all and they had to wait. The situations of some commodities is just that. In fact I have met with little stubborn resistance on this argument on the part of growers. If they have any stuff to sell, they will sell even tho the price is down, but they want cash. The buyers and brokers are loaded to the brim with stuff; the banks are all holding them down and until the crest runs off a little, cash bids will be weak and few for the commodities. Many of the growers are pestering the life out of fruit dealers trying to get money

due them on stuff already sold. We have some of these growers who have accounts receivable. Many of the dealers are responsible and will pay when the peak begins to simmer down, but if they can't borrow from the banks they have to wait for returns and there is nothing to do but tell the growers to go to their banks and tell them these conditions, and the banks can do nothing but carry them along.

We are still getting in a little bit of money each day on our loans, but it is sickening the way things drag on.

Our statement on the 14th showed about \$6000 balance, and I note that you charged the Barney note of \$3500 along with some others to our account. Our floating drafts were about \$12,000 on that day and altho our remittance to-day will help about \$8000 we will be in the red again unless it keeps up good. We gained \$14,000 in deposits to-day, \$6000.00 of which was in currency, which of course is refreshing, but for several days past it went the other way strong, our low water mark in deposits being \$440,000, Saturday, to-day, up to \$454,000.00 again. The deposit end of the business is all quite regular at present and it is reasonable to expect that they will at least stay above \$425,000.00 unless we can get more county funds which will likely be towards the end of February or first part of March. At that time, if we have the collateral, it is possible that we might get \$50,000.00 additional in county funds. If we should get something of a raise or temporary spurt by March 1st from the general run of business, together with

what liquidation may be made by that time, I hope we will have a little breathing spell for a few minutes from the reserve standpoint. Our actual cash reserve when you get down to the bottom of it has been running from 6 to 10%; in fact scarcely more than the cash on hand in the bank, as actual collected balances are usually an unknown animal around here usually offset by what our books show as overdraft with you, the balance of due from sundry banks consisting of uncredited apple drafts gone hay-wire. That E. S. Small business is enuf to drive a fellow to drink. By the way, I misinformed you as to his indebtedness here. He is on the books as a [126] borrower at this time of \$16,250 instead of \$20,250. The girl posted a note to his account in error. The *the* \$16,250 add overdraft of \$1900.00, stranded fruit drafts which will come back on us of \$5000.00 and you have a total of about \$23,000.00 Small actually has a bunch of stuff consigned East trying his best to sell it and take a loss on part, but to date hasn't gotten any money on it, and the come-backs of the apple drafts, wherever there is a chance, we are arranging to file R. R. claims in our name. Just how he will come out, we don't know at this time. Small was in this P. M. and wanted to go over stuff with me, but I had four borrowers waiting to see me then and he had to get back to his business. I had a real day's work to-day; from ten o'clock on I was taking statements and figuring with borrowers steadily, and when I got to the end of the bunch, I looked at the clock and it was quarter to four and

felt pangs of hunger as I eat a light breakfast, so went out and had a lunch; worked a couple of hours more and then went to the Commercial and had a good feed to the tune of \$1.65 and Tales of Hoffman.

Ellis did some work to-night which will help. He wrote up a large pile of letters on past dues, asking them to come in. I hope it brings results. It's quarter to 12 and I have to beat it and get my stuff in the mail. I promised Mr. Barghoorn I'd keep him advised as to how things were going. No time to-night and if you show him this it will give him some idea.

Sincerely yours,

W. F. BUCHHOLTZ.

(Signed) W. F. BUCHHOLTZ.

January 18, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Referring to your letter of January 15—we have instructed Mr. Snyder to make no charge against the Central Bank without authority from you. However, in some respects the system is all wrong.

You ought to arrange it so that there would be a certain amount of new paper coming in to take the place of the old paper as it matures, so that we would not be under the necessity of waiting for you to obtain renewals—something which is at times rather difficult.

Unless a system of that kind can be worked out, your humble servant and a lot of the other employees of the bank will be working overtime trying to get the past due notes in shape, and to keep away from the wrath of the Bank Examiner.

Sincerely,

W. T. TRIPLETT,
Secretary.

R.

1-18-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.
In General.

Dear Mr. Triplett:

Deposits held about even and collected in a little better than \$2000.00. Am scheming and figuring on how and what to send you as I know if we have any balance there, it represents floating drafts as our books show quite an overdraft, but will be sending you something before the week is up.

Well, it became necessary to have a confidential talk with Ellis to-night in an endeavor to ascertain his ideas and as to how seriously he took my presence and position. You understand things have gone pretty smooth between us for a while until to-day or this evening. It was like this: Mr. Barghoorn mentioned to us that the Wapato Construction Co. would get \$3000.00 in a day [127] or two; in fact I mentioned it in one of my letters. This didn't come promptly and altho I was on the lookout for it, I failed to notice that the deposit was made yesterday, the 17th. It was an under-

standing with the bank that when Wells got this payment, the bank was to get part of it; in fact the bulk of it. Wells agreed to that, and Mr. Barghoorn wanted us to see that we did get some of it. Ellis knew the deposit was made and saw Wells make it, so as soon as I discovered it to-day, I jumped him about it since Wells had already checked it down to \$2100.00 by close of business to-night and nothing on our notes. Ellis said Wells didn't say anything about his notes (both past due) but mentioned he would be in to see him to-night. This was before six. Right then, I plainly told Ellis that if Wells didn't show up to-night as agreed, I would charge his account with \$1500.00 or half of the deposit and endorse it on his note, advising him of it and informing him that we would not tolerate his overdrafts—his account was overdrawn before the \$3000.00 was deposited. Ellis didn't say much to that, but agreed that Wells was perfectly willing we should have a part of the \$3000.00. So far so good. Well to-night about 8 Wells sure enuf showed up. Wells being well acquainted in Tacoma, the subject drifted to the Scan. Am. Bank and the people in it and the causes, etc., which lasted about half an hour or so and then drifted into his work and the collection of what was due him. Finally it appeared Wells was about to go and thinking that nothing would be done, I mentioned that since he was here, why not get his notes in shape. Wells said good. He would rather do it now than tomorrow when he would be busy. I dug up the two notes 2500 and 4000, both past due and turned them

over to Ellis. By the time I got the notes, Wells had made out a check in blank for \$2000.00, which was lying on Ellis's desk, and I at once thought it was payment on notes. I didn't pay any more attention to the dealings and went about something else. When Wells had gone, I found that both notes were renewed just as they were with interest paid only. I inquired of Ellis how it was and what the \$2000.00 check was for. Well, the check was just to show his honesty and desire to protect the bank inasmuch as his balance would always be in our charge and if we saw fit, we could draw it any time; in fact kept his account as security if we wanted it. Naturally, I began to get warm under the collar and asked him to give me an explanation as to why he did this after Mr. Barghoorn had mentioned the matter, and I had emphatically told him a few hours before that we were going to get \$1500.00 of that \$3000.00. I would have said nothing had it been \$1000 at least. He hummed and hawed and said that Wells would have enough in 15 to 20 days to clean up the entire \$6500.00, and that he thought when I mentioned to get the notes in shape that it was agreeable to me to renew them and if it wasn't why didn't I speak up and talk to Wells. Of course I had to explain that in any case where he was already negotiating with a customer to the point of granting renewals that it was not my place to horn in and say no we won't do this or that, and when he already knew what the program was, it would be much more diplomatic for him to handle the customer and in the end, I didn't want to hu-

miliate him by riding over him in the presence of a customer; that that wouldn't do and I began to get warmer and plainly told him that I had been thinking that he and I could work together and that he wouldn't go ahead and do things without my knowing it or against my wishes; that in this case he didn't even tell me that Wells had made the deposit yesterday when he knew it and then in the end deliberately did the opposite of the policy and plans I had laid out to his knowledge and even at the request of Mr. Barghoorn. He came back with the statement that I shouldn't criticise; that there had been piles of criticism thrown at him, etc., and for me to cite one instance other than this that he had not followed out my ideas. I replied that I was not driving at anything else he had done, or had not done, but was talking about this deal to-night and what I wanted to know and get at was to ascertain whether or not he was going to take my plans and policies seriously or not, and if he wasn't I wanted to know it right away. He kept dodging and squirming around the issue and we weren't getting anywhere. Finally I asked him if Wells had argued that he absolutely needed every dollar of it to finish his job and that it would be impossible for him to spare any of it. (That is the funny part of it.) He said no, he didn't; in fact, he mentioned that he wasn't going to use a dollar more than he had to and expected to keep a balance of over \$1000.00 on hand until he got his estimate the 26th—which I know he won't do. Checks came in thick to-day [128] and he will write out a lot more to-morrow and the \$3000.00

will be scattered in no time. I failed to get the idea of leaving the \$2000.00 check which Ellis said he did voluntarily, but that it wasn't understood to go on his notes. Well, after jangling a while he said Wells was coming in again to-morrow and he would ask him to give him a check of \$1000.00 to apply on his notes and ask me if that would be satisfactory. I said "Ellis, if you have granted him renewals on all of it, would it be good policy to change your mind over night and the next day ask him to pay \$1000.00?" Well he thot he could get by with it smoothly and that anything was alright with Wells.

Now what do you know about such a case? I have him sized up as a banker who lets his borrowers manage their own credits. Of course Mr. Barghoorn's strict instructions to make no loans whatever has held him down and it is a mighty lucky thing that it came to that when it did. We have had enuf forced on to us since.

Knowing that it is easy to criticise and tear down a fellow when he's in a jackpot, I have tried to look at the man's good qualities and exaggerate the factor that markets went against him, together with shrinkages in deposits, when it wasn't expected, and all those things, but right now I am firmly convinced that he has no backbone or there is something radically wrong and the man not only uses poor judgment but is dangerous in a bank. That's pretty strong and someone might say that of me before I get thru with my banking career, but if it ever comes to that and several bankers in high

positions who have made a success will say that, including the banking department, I think I will admit that I am a failure in the line and if my presence is desired I will still stay and do all I can. With him it is different. He still thinks that he knows what he is doing and made the statement to me to-night that their condition is the result of circumstances over which they had no control and that he Ellis had done everything possible to better things and that he didn't think anyone else could have done more than he has done, and everything you bring up, he has an alibi for, and says the criticism is merely prejudice, etc.

I said "Ellis, you are all wrong. You have 10 borrowers owing you an aggregate of over \$100,000.00 right to-day and you don't need a single one of them." To that he replied that it was business of their local directors and stockholder and approved by the directors and that Millichamp had brot in the Wapato Const. Co. account and this and that. I replied to h-ll with your local directors and stockholders; instead of being a help to you, they are a bunch of heavy millstones, every last one of them. They are not bankers and don't see the situation and it's up to the cashier of a bank like this to tell them at the board meeting what is what and that you can't carry the loads they are shoving on to you, and I haven't seen one slight effort on the part of a single one of them to relieve you of what you are carrying for them. There is Millichamp \$13,000. Woodcock \$12,000. Ross & Fischer \$5000.00. Wapato Const. Co. \$6500.00 for almost a year—

brot in by Millichamp, who thinks he did something for the bank, and a lot of other heavy borrowers.

As far as Ellis is concerned, I have made up my mind that you and Mr. Rutter have him sized up about right. If anything your opinions are too good and you have too high a regard for his ability if anything.

To end our argument and conversation, we both agreed that it was desirable that he stay on the job for effect, and I added that I hoped strongly that the prospective purchasers would buy the institution and bring enuf deposits to take up all indebtedness and clean up with the S. & E. and stay out, and that as the new people had expressed a desire to have him remain with them, I wished him and the bank every possible success in the world, but in the meantime, while I was here, there was no sense in the bank paying my salary and heavy expense if he was going to pull any more stunts over me like this one; that I had lots of other work that I could do and didn't need this job as far as I was concerned, but that I had been sent here to help liquidate and that results were expected of me and I wouldn't stay without [129] his recognition and co-operation. I had ripped him up pretty severely, keeping in mind that we need him still but feeling that he has nothing in sight and Lord only knows how bad he wants to stay and make some people think he knows something. He finally came part way, appreciated that what argument we had had in the past had taken place when we were strictly

alone and the fact that I hadn't once jumped him in the presence of any of the help or customers and added that he would see that nothing of importance was done over my head again and was willing to work in harmony with me and tried his best to smooth things over and we parted in good spirits and I think I accomplished something thru our long argument. Whether he takes it seriously or not, I don't know. I wish someone would analyze this fellow for me. It's beyond me. He is different from any human being I have ever chanced to work with. I have made up my mind that I need to watch him closely each day, or the first thing I know, he will let another \$1000.00 get away.

Well, it's me for bed. I am merely writing you these things occasionally to put you in position to make recommendations and suggestions. You have had lots of training and experience in discipline while I have not; at least I have accomplished nothing in that line.

Sincerely yours,

(Signed) W. F. BUCHHOLTZ.

1-18-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

I want to get you some notes in shape for rediscount to cover the O. D. just as fast as I can get the charged-up ones renewed or collected, and complete

information to cover them. This goes slow however. I have seen Barney on the \$3500 as yet.

Enclosed are two little ones as follows:

W. G. Linse \$300.00 due 3-18-21

Jos. E. Frisque \$200.00 due 4-17-21

the latter secured by U. S. Liberty bonds aggregating \$250.00 which are enclosed. Kindly have Mr. Blake attend to conversion of the bonds.

Both of these notes will be paid in cash at maturity; statements enclosed.

I wish I had about \$20,000.00 of stuff like this. Kindly credit if acceptable and advise details.

Yours very truly,

W. F. BUCHHOLTZ.

(Signed) W. F. BUCHHOLTZ.

Registered.

P. S.—Don't laugh. Every little helps, you know.

January 19, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Prepare yourself for a shock. Day after tomorrow your account will be charged with the six Associated Fruit Company drafts which have been outstanding for so long. The enclosed telegram is the answer.

We are hoping you are fortunate in getting the old boy to dig up, but are [130] not entirely sanguine over the matter.

Sincerely,
W. T. TRIPLETT,
Vice-President.

R.

January 19th, 1921.

W. T. Triplett, Sec.,
Spokane & Eastern Trust Co.,
Spokane, Washington.

Dear Sir:

Enclosed is original note of E. F. Burrill for \$600.00, together with late financial statement, from which you will observe will not be collected until 1921 crops are realized. The note is secured by chattel mortgage held by this bank, covering all 1921 crops on ten acres of orchard and alfalfa, together with one Chevrolet touring car, two farm horses, two milk cows, wagon, plow, harrow, ditcher, two cultivators, and a disk.

History of the renewal is enclosed.

I am submitting this as *collateral* to make up several small payments collected during the past two days.

Very truly yours,
W. F. BUCHHOLTZ.
(Signed) W. F. BUCHHOLTZ.

B/H.

P. S.—It is necessary to give you some of this from time to time for collateral purposes.

1-19-21.

Mr. Triplett:

What did you do with the Franc Inv. Co. note of \$11,000.00. According to my records you still have it. Would suggest that you enter it for collection there at the same time holding it as security to overdrafts if any.

To confirm our records, kindly write us acknowledging receipt, or send collection receipt.

Yours very truly,

W. F. BUCHHOLTZ,

(Signed) W. F. B.

1-19-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

COLLATERAL.

Dear Mr. Triplett:

I have taken out the Wapato Construction Co. note of \$2500.00 from the collateral to bills payable. In substitution thereof, I offer the following:

B. L. Chaney	1000.00
Statement & History	
S. L. Allen	1984.20
Statement	

You will observe the former is signed B. L. Chaney Livestock Co. and endorsed B. L. Chaney. The corporation is still in existence. Its only assets are the [131] 19 head of cattle, with the \$1000.00 note against them. Chaney is arranging to dissolve them as he and wife are the only stockholders and in reality considers the whole matter as

his personal, but had him sign in this way to cover the point.

I have hopes of getting something on the Chaney note by maturity as he wants to get it out of the way. On the Allen proposition, there is a wide margin for payment out of 1921 crop. Allen is perfectly agreeable to deal with and I will have the chattel cover his entire crop for 1921 and then altho I admit it is very slow paper, yet I would say it is reasonably secure.

If the swap is agreeable to you, kindly change your collateral records accordingly and advise.

Yours very truly,

W. F. BUCHHOLTZ.

(Signed) W. F. BUCHHOLTZ.

1-19-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

General.

Dear Mr. Triplett:

Not much special to-day. Deposits dropped about \$3000.00. Drafts on you over to-day's remittance of about \$6000.00 with \$9000.00 clearings on hand for to-morrow morning. Collected about \$2000 in cash on loans, which is over our average of late.

On the Lowe State Theatre account, it is not so bad. Last week they ran behind only \$1004, and we got our wire for credit the following morning. In fact we are safe on this as they keep three to five accounts and the pay-roll and expense account

is the one which runs short and usually there is enuf money in others to cover the shortage with good deposits every day and should there be any delay or stop to the thing in New York, we could immediately refuse to give them credit for the shortage slip and would be covered for what we were out in any case. In fact on the average I think they would have about \$4000.00 average balance; sometimes much more. For instance they have Madam Pavlowa this week with a special account. It is now over \$3000.00 alone and settlement is made at the end of the week and the account all told is not so jerky but to be of some value. Especially right at this time they bring us lots of currency and silver.

Herb took on the \$6500.00 H. D. Smith paper without a murmer for which we are grateful.

As a whole, I can't say the situation is getting any worse of late, but it seems that actual cash is getting scarcer and scarcer. Every kind of a deal is always paper, if a fellow sells anything he gets paper or credit on account with a promise to pay soon. Lots of apple growers can't get their money from dealers and things just drift, drift on. I am not talking it or wish it on to myself, but it appears that right at present conditions are getting from bad to worse. Of course the old timers around say you can't expect anything in January and that things don't move around here until Feb., March, and April. Here's hoping.

Sincerely yours,

(Signed) W. F. BUCHHOLTZ. [132]

1-19-21

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

I submit the following notes for rediscount and credit:

H. C. Schumacher & Sons	\$ 600.00	due 3-2-21
Wapato Const. Co.	2500.00	due 2-6-21
Wapato Const. Co.	3000.00	due 2-6-21
Jerome Lewis	4600.00	due 3-20-21

Total \$10700.00 . .

Schumaker note unsecured, financial statement 1-19-21 Wapato Const. Co. I think is in pretty good shape with prospects of full collection at maturity. History on transaction enclosed together with assignment of amount due on school contract, all told 5 forms.

Jerome Lewis, secured by tax certificates, you know about as you have had it and this is renewal, history enclosed. I know you aren't keen about this. I have the tax c d's in my possession and they total amount shown. We might get considerable on this in 60 days and might not, but in the end I believe the security is good. It is made up of a long list of small items of from \$150.00 down and as these are paid, the county treasurer gives Lewis a check and he applies them on the note. During the last 60 days there has been only about \$150.00 applied, but Lewis thinks the note will be half absorbed by maturity at least.

I hope you can get this on the books without de-

lay as we will need it to meet that \$17,700 draft which will likely reach you Friday.

I will send more as soon as I can get it in shape.

Sincerely yours,

W. F. BUCKHOLTZ.

(Signed) W. F. BUCKHOLTZ.

P. S.—You will observe that I made end. of 1000 on Wapato Const. Co. to-day. The Jerome Lewis note is renewal of note you had. The rest new.

1-19-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

Your letter of the 18th received with reference to charging back rediscount maturities. I fully agree with you that the system is all wrong. It is worse than that. It is rotten, but for the present and no doubt for some weeks, it will remain a question of which is preferable to you—overdrafts or past-due rediscounts. I would like to increase our rediscounts about \$20,000.00 and get a balance enuf ahead to cover charges of maturities, but would you consider stuff that will not be paid until 1921 crop returns are in? There is a limit of the liquid stuff and if the maturities are charged up and we have 10 to \$15000.00 of it on our books continuously for collection and renewal—you can't keep it down closer; needless to say I will keep pounding away at it with all possible speed.

I know our O. D. was covered to-day; besides I will get out some notes for rediscount in to-day's mail, but keep a stiff upperlip when that \$17,700 draft to Seattle Natl. hits you about Friday; in the meantime, we may have some good remittances; to-day was light, altho we have \$9000 for clearing in the morning. We collected a little over \$2000.00 in cash to-day on loans, but the situation is largely still in a kind of deadlock. [133]

The slip showing O. D. the 18th of \$6755.25 received. If our \$18,000.00 remittance reached you to-day as it should have covered temporarily and in the meantime I am sending what I think is the best I can scrape up and will continue to send more.

Yours truly,
(Signed) W. F. BUCKHOLTZ.
For Cashier.

January 20, 1921.

Mr. W. F. Buckholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Subject: Brown. Sheep man.

We got you the first time. The matter was discussed in our Executive Committee, and I also had the pleasure of talking it over with our attorney, Mr. B. H. Kizer.

If it were possible to do so, our thought would be for Mr. Brown to go somewhere else to get the money and pay you off. Under present circumstances that is impossible, so the only thing to do

is to "see him through" by putting up the \$600 that is needed for shearing and lambing purposes. As Mr. Brown is now coming to you for assistance, this is the time for you to tie up everything he has so there will be no question about the ultimate payment of the loan. We feel you should get a chattel mortgage on his entire bank of sheep amounting to about eleven hundred head; that the mortgage should recite the working arrangement between him and his father-in-law, and that said father-in-law should either in writing or before witnesses who make an affidavit, state the facts of the case as far as he is concerned.

In other words, Brown's ownership of the sheep should be established beyond any question of doubt. In case the old man won't sign, then have Brown issue an affidavit setting forth the facts, have it witnessed and regularly sworn before a Notary Public.

This is about all there is to it, and we feel confident we can leave the matter in your hands for action—our only thought being that Chambers should commit himself so that there would be no misunderstanding.

Sincerely,

W. T. TRIPLETT,

Vice-President.

R.

vs. United States Steel Products Company. 201

January 20, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Subject: Gray and Barr notes.

Renewal satisfactory. Your account has been credited \$2,880.75 to cover the proceeds of the new notes, and charged \$2,900 to retire the old ones.

The main thing as we see it is to watch these boys and not let them be too optimistic about future prices. You no doubt realize that the market on everything is slipping and that at best it is very, very slow. There is not enough idle money in the world to buy any great amount of produce, and on top of that the day to day and hand-to-mouth market is not conducive to higher prices.

Sincerely,

W. T. TRIPLETT,
Vice-President. [134]

R.
Enc.

January 20, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Subject: M. B. Campbell loan.

He owes too much in comparison with his liabilities, and in our opinion you ought to get yours while the getting is good. He is not the sort of customer who will ever be of much value to you,

for by the time he pays a couple of thousand a year interest on his indebtedness and pays his expenses of operating, he will not have enough left to become a valuable depositor. The fact that he has borrowed from another bank is almost sufficient to cause you to sit up and take notice.

I would say collect,—unless he gives you warehouse receipts for a sufficient amount to cover your loans, and he should not place the value of the apples at over \$1,00 per box. At that you may get stung. Optimism is a fine thing but we would rather have the money. If he thinks he can get \$2.25 or \$2.50 a box and can find someone else to finance him, that is the thing for him to do. You cannot depend much on the judgment of a man who this year sold his crop and bought tractors or automobiles, and increased the improvements on his place. If you can get the tickets, of course we will renew for thirty days with the understanding that he pays at maturity.

Messrs. Ellis and Barghoorn both seem to feel that if you put on the pressure too hard the borrowers will begin to talk about the bank, and to some extent we feel they are right,—but on the other hand, fear is about the worst thing in the world. It causes a man to neglect his business and to almost crawl into a hole and pull the hole in after him. The fellow who goes on about his business and does what is right, having the diplomacy of which we well know you are possessed, is bound to come out on top, and I have not the slightest

idea but that you can pull things out along those lines.

Sincerely,

W. T. TRIPLETT,
Vice-President.

R.

January 20, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Subject: E. F. Burrill note.

We have accepted this as substitute collateral against your \$20,000 loan. I notice you do not say "security"; you merely used the word "collateral." Nuf sed. However, there are some things we have to make the best of.

The only thing we don't quite understand, is why when the collateral notes are paid you do not apply the amount on the loan instead of substituting something else.

Sincerely,

W. T. TRIPLETT,
Vice-President.

R.

January 20, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Subject: Franc Investment Co.

We are holding the \$11,000 note here for safe-

keeping for your account, and as some little protection to your overdraft, although we are not banking on it too much for that purpose, for we do not want an overdraft if it can be helped. [135]

We are looking to you to keep us using black ink instead of red.

Sincerely,

W. T. TRIPLETT,
Vice-President.

R.

January 20, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

In General.

I want to again impress upon you the necessity of keeping right on top of these borrowers and not letting them get away from you. We have had so much grief this year that we have come to realize that no dependence can be put in either the market or the predictions of the borrowers. They are all optimistic and seem to feel that as soon as spring opens up things will begin to move, while, as a matter of fact, there is nothing in sight to verify their predictions. Money is tighter than ever, is hard to get; people are not buying anything unless they have to, and that includes food stuff as well as clothing, and we do not look for any decided movement until prices stabilize somewhere, and the stabilization point has not yet been reached. Things may hang around a given point for a few

days, but everything is on the down grade and they will go a good deal lower before they come back to any kind of normal basis. Prices have been abnormally high, and they must go subnormally low before finally adjusting themselves.

You know how it is: Bill is going to pay you because Tom is going to pay him, and Henry is going to pay Tom, and Jim is going to pay Henry, and by and by Jim fails to sell his stuff and the string is broken and nobody gets his money. The only safe course for a banker to pursue is to get the collateral in his own hands, and use the pressure that is necessary to smoke them out.

I only wish we could look for higher prices; it would mean so much more money in the community for us, and you can bet your last bean that if we thought for a minute prices were going higher we would not advise anyone to sell, for we want all the money in circulation that can be put in circulation. It means bigger deposits for us and greater earnings. On the other hand, we are just as anxious that the farmers and growers sell their produce now instead of waiting until the price goes lower, because in the latter case our deposits slump accordingly.

Your account is overdrawn to-night \$7,726.10, and the big Seattle check has not shown up yet. It looks like you will have to pass along a few more rediscounts.

Sincerely,

W. T. TRIPLET,

Vice-president.

R.

1-20-21.

W. T. Triplett, Secretary.

Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

Enclosed find for rediscount and credit the following notes:

John Lufe	400.00	Statement	
W. Hasegawa			
H. Tateoka	775.00	"	Hasegawa
J. L. Barney	3,000.00		
Ralph B. Williamson	300.00	Secured by U. S. Liberty bonds	
		\$400.00	
Total	<u>4,475.00</u>	[136]	

I will forward the \$400.00 liberty bonds to-morrow as they need conversion anyway, and to-night are locked up.

The Luft note \$400.00 might not come to requirements, but the old man is an honest fellow and besides himself has two boys working and in some way will manage to clean it up, and besides is in fair shape, owing little.

The Jap note is only 15 days; he has sold spuds and will pay in two weeks.

The Barney note is back once more. Ellis handled Barney while I was out. He voluntarily paid the \$500.00 on it and told Ellis we could have it in full any time by a couple days notice. Barney is really in pretty good shape. Barney & Callahan operator strictly cash stores at Yakima, Pasco, Kennewick, Cle Ellum, Roslyn and others, altho in some places the stores are under other names. They are in easy shape, maintain balances at this bank of from \$10,000.00 to \$20,000.00 continuously.

Barney attends to buying from all and handles all cash. Of late their account has been down to \$5,000.00 as they have been sending some funds East, but the turnover is good, the other towns remitting here. There is no doubt that he can draw the money from the store accounts and that he is good for it, and would be entitled to it, as they always have more money in the bank than this note, altho I admit it should be gotten down to a definite commitment as to payment, which we haven't got. If worse came to worse, there is no question but what you could collect this note on the outside.

Yours very truly,

(Signed) W. F. BUCHHOLTZ.

P. S.—I have endorsed these myself as Ellis isn't here to-night.

January 21, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Re: Rediscounts.

Your account has been credited with \$4,411.42 to cover the proceeds of the rediscounts sent in your letter of January 20.

They look better than the average run of notes, and we believe you will be able to work them out. We are not concerned much about Barney, as he seems to have plenty of assets and to be a mighty good customer.

Sincerely,

W. T. TRIPLETT,

Vice-President.

R.

January 21, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Re: Collateral.

As requested, we are using the notes of B. L. Chaney \$1,000 and S. L. Allen \$1,934.20 as collateral to your loans in place of the Wapato Construction note \$2,500.

We could be arrested for what we think of the Allen note. While on paper it sounds good, his statement shows a net worth of such a small amount as compared to what he owes that he seems hopelessly lost in the shuffle. However, for the reason that it has to be done, we are making the substitution for you. Mr. Allen may be able to pay out of his 1921 crop, but all of you fellows who are connected with the Central Bank & Trust Company had better [137] get down on your knees and start to praying that everything will run along right, or I fear you will never get the money.

As a matter of fact, I can't for the life of me see how that loan ever got in the bank. Somebody must have used a gun one dark night when there was nobody else around.

Sincerely,

W. T. TRIPLETT,
Vice-President.

R.

January 21, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Re: Rediscounts.

Your account has been credited with \$10,622.15 to cover the proceeds of the rediscounts sent in your letter of January 19. You have been charged \$4,752.48 to retire the note of Jerome Lewis, renewal of which was enclosed to you.

Congratulations on getting the Wapato Construction loan in such good shape. You handled it just right. The only thing left to do is to see that the money they get comes to you to pay off their notes.

As to Jerome Lewis—it is one of those things that may take a long time to work out. Under ordinary circumstances we would not be favorable to making such a loan because things are too uncertain, but for the good of your bank the Executive Committee passed it through.

Sincerely,

W. T. TRIPLETT,

R.

Vice-President.

January 21, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Re: Loewe Theater.

Glad to hear you have this account in better

shape. We talked it over somewhat with Mr. Barghoorn when he was here the other day, and both Mr. Rutter and I are of the opinion that it is not an account which you might ever expect to get much out of.

It is one of those things you have to watch like a hawk, and we believe he should be able to finance his own operations without calling on you for advances at the end of each week.

Sincerely,

W. T. TRIPLETT,

R.

Vice-President.

January 21, 1921.

Mr. W. F. Buchholtz,

Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

In regard to the Associated Fruit Company drafts—we are charging your account to-day as follows: [138]

October 14.....	\$1,277.50
" ".....	1,277.50
" ".....	1,596.00
" ".....	1,240.00
November 20.....	1,134.00

These have been entered for collection and will be credited to your account when and as paid, but I think you had better get after them and see if you cannot get the money.

There are two other drafts which have been out a good while, and I wish you would see the makers and try to get action at an early date. We refer to

vs. United States Steel Products Company. 211

William Joseph, Pittsburg, December 9.
\$2,060.20 received by us.

I. Cohen & Sons, December 16. \$1,000.00 received by us.

Sincerely,

W. T. TRIPLETT,

R.

Vice-President.

January 21, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

Enclosed is a memorandum showing a credit for \$493.25 to cover the Linse and Frisque notes. 'Nuf sed.

It will be agreeable to us to renew the Barney note when you get a new statement and all the trimmings.

Sincerely,

R.

W. T. TRIPLETT,

Enc.

Vice-President.

January 21, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

It will be agreeable to us to exchange \$10,000 worth of Liberty Bonds with the County Treasurer, and we are sending you under separate cover by insured, registered mail, the bonds shown on the enclosed memorandum.

Before turning these over we will ask that you not only send us the bank's receipt for the other bonds, but also the receipt which the Federal Reserve Bank sent you in connection with the conversion. We would not want to take the bank's receipt alone, as we would be in the same position as the treasurer, which you will admit is bad business.

We are depending on you to keep track of it, and see that when the bonds come back from the bank they are personally sent to us.

Sincerely,

W. T. TRIPLETT,
Vice-President.

R.

January 21, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

As I told you yesterday over the telephone, we are well pleased with your [139] letter about the conversation you had with Mr. Ellis in regard to the Wapato Construction Company notes. There is no use in mincing words with that fellow. He either has not the backbone to follow a safe banking practice, or there is something wrong with his noodle. It seems to me that his experience in the last two months should be enough to teach him to go slow, but from our judgment of the man the only thing that can cause him to change his course is a bump right square in the face for himself, and not the bank.

You handled the matter right, and particularly as regards the policy of his directors. Those accounts brought in by Miller and Champ are nearly all dead weight, and there is no use in mincing words with them. The kind of business you should support now is that of non-borrowers who will have crops and whose deposits can be used to liquidate indebtedness.

Sincerely,

W. T. TRIPLETT,

Vice-President.

R.

1-21-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

Collateral.

Enclosed are the B. L. Blood note \$400.00 and H. Z. Honda \$3000.00 which you returned for endorsement of this bank.

I have taken out the Conrad Weiss note of \$1480 odd out of the collateral due to condition of borrower and am substituting the following in its place.

H. Z. Honda	1100.00	due 4-17-21
A. J. Withers	250.00	„ 3-23-21

This makes all of Honda's notes up as collateral or \$4100.00. This may not look good to you but it is secured by tangible assets consisting of hotel furnishings in two hotels, lease paid on one for 3 years in advance. Furnishings valued at \$10,000.00

insured for \$8000.00. This is large but when things pick up, the Jap hotels make quick money.

Statement enclosed on Withers. We will get something on that soon.

Yours very truly,

W. F. BUCHHOLTZ.

Enc. 4 (Signed) W. F. BUCHHOLTZ.

1-21-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

Enclosed are original notes as follows:

A. A. McDermid	\$1200.00
L. W. Adams	100.00

renewals of rediscounts the same for \$1300 and \$175.00.

New statement and history on McDermid enclosed.

L. W. Adams cut off \$75.00 which he saved up. He hasn't gotten his apple money as yet. You have late statement. He is a clean cut young fellow and hunts up some work when he is idle. States he will clean up his two notes as they stand now by maturity. [140]

On the McDermid statement, I don't like the looks of the payment on his residence, but he assures me will clean up here out of hay and we will watch him.

Also kindly charge our account with \$200.00 and endorse on the Baldoser rediscount. He left his check for interest and \$200.00 on principal when

I was out. I want to get new statement before renewing and expect to get hold of him to-morrow.

Kindly advise details of entrees and oblige,

Yours very truly,

W. F. BUCHHOLTZ,

(Signed) W. F. BUCHHOLTZ.

P. S.—That makes \$375.00 cash collected on your rediscounts today—going some, don't you think?

January 21, 1921.

Mr. W. T. Triplett, Sec'y.,

Spokane & Eastern Trust Co.,

Spokane, Washington.

Dear Sir:

Enclosed find the following U. S. Liberty Bonds:

Rate	No.	Kind	Amt.
4 $\frac{1}{4}$	9104835	Fourth Loan	\$100.00
„	9104828	„	100.00
„	9104829	„	100.00
„	9104827	„	100.00

aggregating \$400.00 to be held as collateral to the Ralph B. Williamson note of \$300.00. We have no hypo on this, as the bonds were taken out of a bunch of miscellaneous collateral held by this bank to cover any loans made Williamson.

Kindly have your collateral department attend to the conversion of the bonds.

Very truly yours,

W. F. BUCHHOLTZ,

B/H (Signed) W. F. BUCHHOLTZ.

1-21-21.

R. L. Rutter, President,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Rutter:

To give you an idea as to how quickly and unexpectedly a hay farmer can go broke in an irrigated country and secondly my idea as to the importance of complete and thoro statements, the necessity for following up with a second statement after the crop is grown, instead of a statement showing crop estimates—all from the standpoint of the rediscounting bank or the Federal Reserve Bank—I enclose statements as of June 2, 1920 and Jan. 1, 1921 of one Conrad Weiss, a borrower of the Central Bank & Trust Co.

In this instance, first the statement of June 1, 1920 was not complete. The borrower was not questioned closely enough, and the important error was the fact that the bank did not find out that the borrower was growing the hay on some 300 odd acres of Indian lands leased at the rate of \$8 per acre, the least constituting a first lien on the crop, and against the crop of \$6250 there should have been current debt of \$2400 as rent to be paid. [141] Weiss is a Russian, speaks very poor English and he couldn't understand me very well, and I tried German on him, which tickled him to death and I found that I could get his lingo better than he could my English and we got along fine, and I think I have his affairs down very closely. You will note I have his 375 tons of hay down at \$10.

Even this is high as it is not baled as yet and a long haul. Weiss says he does not figure on more than \$8.00. The Indian who owns the land is a half breed Chinese who gets drunk every few days and goes after Weiss with a long knife until he has him scared to death, so Weiss gave the Toppenish bank and the Case Tractor people chattel mortgages on the hay subject to prior lien of the Indian agent on the lease, and is now staying away from the reservation entirely, telling the Indian agent and the Toppenish bank to sell the hay for him and if there was anything over to send it to us.

Part of the \$1500 was borrowed for expense on the hay ranch; and had he been able to get \$18 and \$20.00 he could have cleaned up his entire current debts, including the \$1000.00 land payment. The holder of the land contract has made him no promise to carry the payment over. Even if he does, next fall he will have \$2000 to pay on the contract. He has given up the hay farming business and this year will farm only the 25 acres which he is living on. There is only one hope and that is the possibility of getting, say, a \$5000 or \$6000 mortgage on his place. He is going to put in some sugar beets and other truck, and his two boys are going to work for wages all summer to help get out of debt, and that these boys had agreed to stay with him until he had everything paid off again. He won't need any further credit as they can get by with their milk checks and eggs, having plenty of feed for cows and chickens.

I took a chattel mortgage on horses, cows, hogs, machinery, and all crops to be grown on the 25 acres which is subject to prior mortgage on horses and part of cows to the bank at Toppenish, but he will of course have to meet two payments on his place of \$1000 each unless he can get extensions or arrange for a mortgage.

In 1919 this man sold over \$5000 worth of hay, paid all he owed and had money left in the bank. It is true that the hay association at Toppenish is selling hay at \$14 and \$16, but Weiss doesn't belong to the association and they won't handle it for him, baling expense of \$3.50, hauling and waste. He will do well to realize \$7.00 net which knocks off over \$1000 from amount listed.

This shows you how some of these fellows get hit and the necessity of keeping in close touch with borrowers and not taking too much for granted. The June statement looks good and I venture the Federal Reserve wuld have taken the note. A year like this should teach both some bankers and borrowers a few lessons which they should not forget immediately after they have one good year of crops and markets.

There were enough vegetables and fruit rotted in the fields in the Yakima valley to feed thousands and thousands of starving people, and it will appear that the government should have taken action to a least save a part of it when it wouldn't pay harvesting expense. Instead of that, solicitors came around to these very people and asked for cash contributions to aid the starving in Europe.

Weiss says he would have been better off financially if he hadn't harvested his hay at all. Can you beat that?

Sincerely yours,
(Signed) BUCHHOLTZ. [142]

1-21-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

In one of your letters of the 20th you touch the subject of apply collections on collateral notes on bills payable.

The idea is all right and from the viewpoint of ordinary rules and regulations, customs, etc., pertaining to business methods, it can only be the proper thing to do.

Mr. Rutter has written to me that we can expect no increase in deposits with perhaps a spurt upwards now and then, and that the only way of liquidating the indebtedness of this bank is to collect on loans. At present practically all of the paper which I have nerve enough to send for rediscount is there with exception of a small amount in the process of collection or renewal and some miscellaneous small stuff on which we haven't the statements and information up on.

I have talked with other Yakima bankers. They are bearing a heavy burden also, but they are all more or less confident of a good washing out of stuff during the next 90 days, mostly thru apples,

hops, potatoes, and some miscellaneous stuff, few having much confidence in hay. This theory is our only possible chance to liquidate our borrowed money down to a reasonable amount and maintain a cash reserve. Should we have a raise in deposits, even tho it might last only 30 or 60 days, it would naturally help our reserve, altho I admit it would be nothing to depend on and liquidation must naturally continue with the same pressure as before. During the process, which at present is very, very slow, I hope to gradually work down our rediscounts as collected and in this way. If anything substantial is accomplished, the best grade of paper will steadily disappear with the money going out, resulting in no betterment on our reserve condition. Needless to say, reserves must be kept up and the only possible way for the present at least, is that if collections are made on notes hypothecated, to keep the money here and give you something else. Of course the collateral will in this way become more and more of an undesirable nature, but I will keep it in as good shape as it is possible to do, keeping in mind that none of this should be of any question as to collection out of 1921 crops, and I am hogtying everything of that nature by chattel mortgages on equipment and 1921 crops where there is anything tangible to get a hold of. Under separate cover, I am sending Mr. Rutter a \$1500 note of Conrad Weiss, renewal of item held as collateral, and the story that goes with it. This item may appear very bad, but if the proper attention is given it next fall and markets amount to anything at all,

it can be cleaned up at that time, even if we have to close him out and allow his ranch to go back by default, hoping in the meantime that better days are coming and that it won't be necessary to be so harsh.

There is only one way that I know of to raise more cash, and that is by arranging the liberty bond loan in Seattle as we have done with you, giving Herb some real estate contracts and mortgages as collateral if he will take it; this is practically the last breath, and inasmuch as our deposits for the last ten days or so have held their own quite well at about \$440,000 to \$455,000, I have lived in hopes that we could get by without this last effort and avenue of relief.

In view of these conditions, if it can be worked out, it will be worked out, and I know that you have to stretch your imagination and use a high powered microscope in looking at the favorable points to the situation; in fact compare this institution to a man at the point of death but with a hopeful doctor on the case who is able to detect a slight heart action, and altho the patient was rapidly failing two weeks ago, the doctor's report is that for the past two weeks now have indicated nothing worse developing, with a possible gain in strength scarcely discernible, and speaking to the patient's wife and children, you would say that he had good chances for complete recovery. [143] In concluding, unless you insist, we will continue to hold what few pennies we might collect on your collateral notes

and substitute other stuff, which I hope you will O. K. for the present.

Sincerely yours,

W. F. BUCHHOLTZ.

(Signed) W. F. BUCHHOLTZ.

January 22, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

The rediscount notes of McDermid and Adams came this morning, and we have put them through our books. Your account has been credited \$1,285.-31 to cover the new notes, and charged \$1,673.13 to retire the old ones.

I don't like Mr. McDermid's statement very much, and I think you had better keep your eye on him to see that he does not divert his funds when he sells his hay. This is one of those cases where the first fellow who gets to the customer gets the money.

Sincerely,

W. T. TRIPLETT,

Vice-president.

R.

Enc.

1-23-21.

R. L. Rutter, President,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Rutter:

Enclosed is list of loans which I think can be col-

lected in full during next 90 days aggregating \$147,941. This of course does not include partial reductions on those which cannot be collected in full. There is considerable of that class. I have gone over it somewhat and a conservative estimate of cash collection possible out of that I think can be placed at \$50,000. I am not taking Ellis's ideas closely and on such paper as I have had no opportunity to check up with the borrower. I have taken considerable salt with his estimates. Where he figures cleanups on some, I have in some cases figured as low as 50%, playing hunches and what information I have picked up and can read between the lines on old statements, discounting heavily where hay is depended on largely and the margins are not closely known.

This will be part of my report and I will appreciate it if you will have the sheets filed so that when I get it all there, they can be fastened together to make it complete. I am pushing along on the report at Mr. Triplett's suggestion and have a good start, but as it is a Sabbath night my conscience tells me that 11:30 is late enough and I know I should have gone to church and prayed for strength and good luck, but I have an alibi which I believe justifies my working tonight. Doesn't the gospel teach us that if it is possible to do some good for your fellowmen on a Sunday, to do it? I believe if I can be of some service in saving a part of the depositors here from loss of their hard earned cash, especially the widows and orphans, I should be per-

fectly justified in working to-night instead of attending church.

I am beginning to make a little speed on the little Corona which I have in my room, but as I am a touch operator it is awkward to change back to the Hunt & Peck system; besides the two shifts for capitals and figures bother me and that accounts for the poor work, but I trust you can make it out, and I am improving rapidly, as well as gaining speed.

Sincerely yours,

(Signed) W. F. BUCHHOLTZ. [144]

January 24, 1921.

Mr. W. F. Buchholtz,
Central Bank & Trust Company,
Yakima, Washington.

Dear Buck:

The patient's friends and family are glad to hear that he is better; that he is no worse, and that he shows good prospects for improvement in the near future. This is extremely gratifying, but in the last analysis it means that the doctor must stay on the job night and day so as to be prepared for any relapse which may come, and to change the medicine if that is desirable. You know the old story about "A stitch in time saves nine." I don't know whether I learned that out of the back of an old spelling book or dictionary, or whatever it was, but nevertheless, it holds as true to-day as ever.

Your method of handling the collateral notes, while satisfactory from your standpoint, is not so

satisfactory to us, for the reason that our collateral will keep getting more and more shoddy as time goes on. We are willing and ready to stand back of the institution to a reasonable extent, but feel in so doing we should have a class of paper which will prevent any loss on our part. Many of the notes we have taken on are not up to our regular standard, and it was only because of your judgment after investigating at close range that we were willing to take them. Naturally, we do not want to take any more uncertain paper if it can be helped.

Our Executive Committee feels that you should immediately get in touch with Herb, and if possible arrange for him to purchase the Liberty Bonds from you, with the understanding that you will repurchase them within a reasonable time; also that he will permit you to put up notes and mortgages at the rate of one and one half to one behind the \$30,000 he is now carrying for you. This will give you \$30,000 additional money and should enable you to go on without any further assistance from us.

You will appreciate that we are already carrying a very heavy load for the bank, and that Herb ought to be willing to do that much for you. I think he will if you go at him in the right way, and remember, every nickel you shift over there means just that much to us. In case, however, he will not do that, get him to purchase the Liberty Bonds and send us your note for \$30,000 collateral by one and one half to one of "good but slow" paper. What I mean by that, is paper which although it will ulti-

mately be paid cannot be liquidated from so-called quick assets.

It is one thing for us to get behind the bank and another thing for us to take a loss on it. Deposits are bound to slump, but we do not want to be in a position of having to pay them off at a sacrifice to our stockholders.

I mention these things so you will understand that while our feeling is the most friendly in the world and we are willing to do everything we can as long as the stuff is reasonably good, we do not want to get into the position where we will ultimately lose anything.

It seems to us with deposits slipping the way they are, and with the prospects ahead none too good, the deal for the sale of the bank should be hurried along as fast as possible, so that our mutual friend, Mr. Barghoorn will get out without greater loss than he will now sustain. In other words, I would rather take the prospective purchasers up on their own proposition than to hold for a higher price. If conditions go on much longer as they are now the institution will soon be in a place where no one will purchase, and then it is a case of either closing its doors or getting someone to see it through.

Sincerely,

W. T. TRIPLETT,

Vice-president.

Buck:

Our people aren't satisfied with the small notes. They think he is broke. Better dig around in the

old walnut sack and see if you can't substitute something else. [145]

January 24, 1921.

Mr. W. F. Buchholtz,
c/o Central Bank & Trust Co.,
Yakima, Washington.

Dear Buck:

This will acknowledge receipt of the collateral notes of H. Z. Honda for \$1100.00 and A. J. Withers for \$250.00 in replacement of the note of Conrad Weiss for \$1486.39, sent you for collection.

We also received the two notes of B. L. Blood for \$400.00 and H. Z. Honda for \$3000.00 sent you for endorsement.

Yours truly,
W. T. TRIPLETT,
Vice-president.

B.

1-23-21.

R. L. Rutter, President,
Spokane & Eastern Trust Co.,
Spokane, Wn.

Dear Mr. Rutter:

The last three days, I have felt very discouraged with the way things have been going. As already advised, I have not expected to make a great showing in reducing rediscunts during January; in fact, I have felt that if we were able to keep up sufficient reserve to keep from overdrawing in Spokane, I would be pleased. I had hoped that after the liberty bond arrangement was made, giving us

\$20,000.00 more working cash, plus some \$60,000 more in rediscounts credited that we would be able to maintain a balance to our credit.

On Jan. 5th when I arrived here, we had about a \$50,000.00 overdraft with some \$8000.00 in fruit drafts gone hay-wire not charged back, making a total shortage of about \$60,000.00 at that time. In addition to covering this, our deposits dropt from \$482,000.00 to \$430,000.00 Friday night, which is rock bottom to date. You will see at a glance how far the above \$80,000.00 new money went.

During the 17 days that I have been here we have collected in cash a total of \$15,259.08 and the enclosed adding machine slip will indicate that about \$10,000.00 of this consisted of small items and that very little large amounts have come in and I don't expect anything large for ten days more; but to get down to my subject of reserves: The large items when they do come in will of course go on rediscounts with no improvement in our reserve. It is reasonable to expect that our deposits will remain above \$400,000.00; in fact, we have hopes that they will hold up pretty well to where they are. The past week the shrinkage has not been bad and all of a regular nature, but to face possibilities square in the face, say we drop to \$400,000.00 during the next two weeks, with collections on stuff in our pouch here to perhaps \$10,000 it will hit our reserve to the extent of \$20,000.00 more. This is a conservative view and we of course hope it will not be that bad. As we stand at this time, if all items are in the counting the \$6500 in apple drafts charged

back the 21st, we will have an actual overdraft of about \$15,000, and I cannot figure out more than \$5000 of notes in our pouch here that can be expected to possibly pass muster for rediscounting unless I run on to something as I take new statements—some borrowers we have no statements whatever. [146]

There can be no sudden large drop in deposits other than a possible actual run on the bank which we have seen no signs of for ten days or more.

I have as yet, nothing completed in the shape of figures as what can be expected in liquidation during the next 90 days, which depends of course on the market on apples, hops, potatoes, and hay, in proportion and importance as per order named, we being fortunate not to have a great lot of hay loans where the margin is short. As written heretofore, business men and bankers here are confident of a good movement during February and March, tapering off in April. If there is not, I might add that there are many other institutions besides this one which will not be able to stand the test.

Altho I have not totaled up exact figures on loans based on each commodity and the probable liquidation thereof, if deposits keep up to where they are or nearly so, enabling us to keep up a reserve, I feel justified in making the statement that I am still confident of cutting down our borrowed money to a nominal amount if not entirely during the next 90 days.

Now I know very well that you don't want an overdraft, especially not running up into large

amounts, and needless to say, I am making every effort to better that condition, and as stated am nearly at the end of the rope unless one or two things can be done.

If Mr. Barghoorn can arrange to carry our liberty bond loan in Seattle, we might possibly arrange with the bank there to carry a note of \$10,000 secured by slow but eventually good stuff, in the shape of real estate contracts and mortgages. This is one possibility which would help. The second is for the S. & E. to rediscount the Franc Inv. Co. note of \$11,000.00 and the Johnson Drainage note of \$5000.00 to be endorsed by Mr. Barghoorn. If neither of these arrangements are possible, there is only one more avenue of relief, and that is to whip up some of the stuff you are holding as collateral into rediscounts and substitute a poorer class of security.

Otherwise before we can collect enough to get ahead on reserve, the overdraft will be there and it will run up to \$10,000 and \$15,000 no doubt, perhaps more if deposits drop, and more drafts for fruit are charged back. In fact, it sifts itself down to whether you desire by all means to keep this institution open by all possible means, depending more or less on Mr. Barghoorn's personal credit, or whether you have set a limit as to how far you will go. Should the expected liquidation during the next 90 days fall far short, and it is necessary for you to carry, say \$50,000.00 more of more or less paper of slow nature, which will reach an enormous sum by that time, I might add that I believe

the possibilities of the institution for future business and earning power to charge off bad paper is here. A bank is needed in this location and a good volume of business is assured, and with close and proper management, there is no doubt in my mind but what the indebtedness carried by the Spokane & Eastern Trust Co. can eventually be worked out and kept within reasonable bounds and worked into a valuable account.

The problems and work to keep up reserves is not at all an easy matter. The suspense is awful, waiting for something to move and bring in cash. It is by far the most stupendous task you have ever seen fit to put me to. I appreciate your confidence and am not weakening, but if you could write me a letter stating whether or not you will back the institution and myself any further in case of necessity it will greatly strengthen my morale, and I will benefit by knowing what to expect, and my very best efforts are pledged to you to get the situation worked out.

Yesterday, we mailed a \$51,000.00 draft on you to the Seattle National Bank covering a large letter of items on other local banks, the net of which has been remitted to you and no doubt we will have a few dollars there to meet it. The draft will likely reach you Tuesday or Wednesday and if you pay it the overdraft created will be the limit to date of credit advanced this institution. Have Mr. Triplett ascertain the amount of the overdraft created [147]

if this draft is paid. If you do not pay it we are gone.

Sincerely yours,

W. F. BUCHHOLTZ.

(Signed) W. F. BUCHHOLTZ.

P. S.—I might add that by keeping the institution open and if necessary advance further requirements which could hardly total over \$50,000.00 more in any event, that it will in my positive opinion result in a much shorter time for the Spokane & Eastern Trust Co. to get their money back then to close it up. We still have hopes of a sale to bolster the situation up, but I am not depending on that.

1-24-21.

W. T. Triplett, Secretary,
Spokane & Eastern Trust Co.,
Spokane, Wash.

Dear Mr. Triplett:

General.

Looks pretty nice to get a slip showing a \$39,000 balance for Saturday, but wow, you wait till that big draft hits you to-morrow or Wednesday, which, together with the drafts charged back, will mean an overdraft of probably \$15,000 again.

I have written Mr. Rutter a letter in regard to the situation, and to be frank I cannot figure out any chance of keeping the balance in our favor outside of the methods outlined therein. I have about \$2500 in new stuff for rediscount in shape, but the notes are locked up and will forward the stuff to you to-morrow. I can send you some other

low grade stuff, if it would suit you better than an overdraft for the present.

Wish you would write me frankly on how the S. & E. feels about things here and whether we can expect you to honor our drafts if the overdrafts should go up to \$25,000.00 or a little more, say for ten days or so and see if something doesn't develop by then.

Things don't look entirely hopeless on the apple situation. Smith showed me a telegraphic order for four cars at \$2.50 to him, which is 40¢ over last week's prices, and he says inquiries are coming in thick to all the dealers, and that they all look for good business during February. Hay is being shipt every day now at \$16.00, that is A1 stuff and altho the volume isn't so great, it shows that something is doing.

Perhaps I am taking things too seriously, but I had hoped that that large bunch of rediscounts and the liberty bond arrangement would keep our overdraft covered, but that bunch of E. S. Small drafts during the past few weeks aggregating about \$8,000 or \$10,000 has put an awful crimp into us, together with the slow regular shrinkage in deposits has run us out of funds. Some money is coming in on notes but it doesn't amount to anything in the way of helping the situation, and unless things improve this week I don't know what we are going to do, unless the S. & E. will carry the institution thru.

To-day it didn't get any worse. We collected about \$1,700.00—\$1,000 of which went on your re-

discounts, with a drop in deposits of only \$1500. I wish I could make things as easily as some people I know, and perhaps I should feel more at ease about it, depending more or less on the strength of your letters and Mr. Rutter's that you would back me up. You have taken on everything I have sent for rediscount it is true, but I haven't the nerve to send you any junk for that purpose and the overdraft keeps wearing and the paralytic circumstances here ride on me. The suspense is awful. [148]

I am going to bed a little early to-night. Sunday morning after I had breakfast and went to my room, I felt as tho I hadn't had sleep enough and thought I would flop on the bed for a short rest. I dropt off to sleep with my clothes on and no covers and didn't wake up for three hours. As a result I took a cold in my head. It isn't so bad tho and won't bother me much to-morrow. I have been very busy again to-day going over things with borrowers altho I didn't get much money. I had to renew that Arslan paper and I have a complete statement of their actual condition. The last statement I sent is all wrong. That fellow don't understand English and to-day I got hold of the older brother who is quite well educated and I have it lined up. We won't get anything on that until April, likely \$2000.00 then and a cleanup in July, not out of hop sales but out of advances on new contract for 1921 crop. We have this covered by an assignment of amounts called for in contract now. The contract calls for \$17,000.00 to be ad-

vanced in April, July and September, and I think we are safe on it now. The total is \$5000.00.

I keep running on to little stuff where fellows paid somebody else and have nothing left of their crops. You are right when you say you have to grab the money when they sell something. Cash is a pretty scarce article around here and when a farmer gets a little of it, somebody soon separates him from it. A \$1,000 which I had figured on slipt away in a peculiar manner. Clyde Lee who owes that amount was in here a short time ago and agreed to sell enuf cattle to clean us up and I had confidence in him that he would do it. He had some cattle near Toppenish feeding them some cheap hay and drove them off alone to some unknown person in that section and apparently sold them. Saturday the 15th he phoned his wife that he would be home the following Sunday. That night he wrote her a letter in a Toppenish hotel to the effect that he had collected \$300.00 cash on the cattle and would get the balance in February and they would then have enough to pay all their debts including the bank which he mentioned in the letter. Lee has never been seen or heard of since. He registered at that hotel but the bed indicated that he had not used it. The postmaster states that the letter was mailed between 6 and 8 that Saturday night. A piece of a kind of car case with his identification in the face was found in a freight shed at Toppenish on Monday. That is the only clue and it seems he has been snatched off of the earth as searching parties

have given up hopes. Old man Davis who has known Clyde Lee for 13 years says there is absolutely no chance of him beating it with the money and leaving his family and that it is no question but a case of foul play. Lee has \$6,000 insurance but his statement doesn't indicate what companies. Don't know if any Western Union or not. Mr. Rutter might have this checked up. Haven't seen Ross about it yet. It is likely that he was knocked in the head for the \$300 he had on him and his body dumped into some canyon. Believe me, the times are beginning to show up on the unemployed and Toppenish and Yakima have some tough nuts hanging around. To-night as I was on my way to the bank, crossing the tracks where it is not very light, a big rough looking fellow stopt me and said in a gruff tone "Give me a half a dollar to get something to eat." There weren't any people near and it was kind of dark and as he didn't ask for a very large sum, I quietly handed him the four bits which he grabbed and walked off. I thot that was the healthiest and most economical way out and as he talked in such a firm, determined tone, I didn't go into details with him either nor argue the question with him. Something told me to close the transaction quickly and make a get away without trying to Jew him down any or discourage the idea for in the meantime, if no people showed up, he might begin to think that 50¢ wasn't enough and might invite me to step in the dark behind the warehouse and enter into negotiations for more. There is a gang of them here. Sunday night they

held a parade and street speeches. They are getting so bold that in one instance they pushed their way into a cheap rooming house one night and slept there in spite of the proprietor's efforts to the contrary.

Well, I must beat it to bed. I'm not much good for business to-night, but will be feeling better in the morning I am sure. I look forward to your letters as the event of the day and any encouragement and assistance or suggestions help a lot right at this time. You see I don't know [149] just how far you can go on S. B. and since he has resigned from the board, it must put it down to a clean cut proposition.

Sincerely yours,
(Signed) W. F. BUCHHOLTZ.

January 25, 1921.

W. T. Triplett, Vice-Pres.,
Spokane & Eastern Trust Co.

Dear Sir:

With reference to the draft on William Joseph, Pittsburgh, \$2,060.20, received by you on December 9th:

This is one of E. S. Small's drafts and as Small is out of the city for a few days, I am unable to get in touch with him, to run it down.

I am, however, wiring William Joseph today asking reasons for non-payment and will let you know of any results as soon as I hear from him.

Very truly yours,
W. F. BUCHHOLTZ,
(Signed) W. F. BUCHHOLTZ.

After the close of all the evidence and after the case had been argued, the following stipulation was entered into between the attorneys for the Spokane & Eastern Trust Company, for the Central Bank & Trust Company, and for the plaintiff, to wit:

In this cause the Court having ruled that defendant, Spokane & Eastern Trust Company is entitled in the decree to have provision made for the return to it of all promissory notes and choses in action, being the rediscounts and securities charged-back against the Central Bank and Trust Company by the Spokane & Eastern Trust Company by the close of business on the 25th day of January, 1921, a list of which is hereto attached, the defendant Central Bank and Trust Company and E. L. Farnsworth, as Director of Taxation and Examination of the State of Washington, contest the right of defendant Spokane & Eastern Trust Company to such a provision in the decree. However, as the court has so ruled and as it will be necessary to take some details of evidence to identify these several items, either before the Court or before the Master, and the defendant E. L. Farnsworth, as Director of Taxation and Examination of the State of Washington, and Central Bank and Trust Company object to the taking of any further evidence in that behalf, but the Court having ruled it may be taken, now without waiving the objections above expressed, or any of them, or any other objection

which might be taken to the said defendants the Central Bank and Trust Company and the said E. L. Farnsworth, in said respects, or any of them, but solely for the purpose of saving the time and labor of making the formal proof, IT IS STIPULATED that such further evidence, if taken, would show the following to be a correct list of said promissory notes and choses in action so charged-back:
[151]

MAKER	PAYEE	AMOUNT	DATE
Brown, C. O.	Central Bank & Trust Co.	\$4,600.00	Oct. 25, 1920
Interest to Jan. 25, 1921		.90	
Paddock, H.	"	1,500.00	Dec. 20, 1920
Interest to Jan. 25, 1921	"	1.75	
McDermid, A. A. &			
McDermid, R. C.	"	500.00	Dec. 20, 1920
Interest to Jan. 25, 1921		.58	
Baldozer, A. E.	"	1,100.00	Dec. 20, 1920
Interest to Jan. 25, 1921		1.22	
Kimura, J.	"	3,000.00	Dec. 23, 1920
Interest to Jan. 25, 1921		1.75	
Sunset Fruit & Produce Co.	"	4,000.00	Dec. 23, 1920
Interest to Jan. 25, 1921		2.33	
Small, E. S.	"	5,500.00	Dec. 23, 1920
Interest to Jan. 25, 1921		3.21	
K. T. Produce Co.	"	3,000.00	Nov. 18, 1920
Interest to Jan. 25, 1921		4.67	
Campbell, M. B.	"	2,200.00	Dec. 17, 1920
Interest to Jan. 25, 1921		3.42	

Dated this 24th day of July, 1922.

GRAVES, KIZER & GRAVES,
Attorneys for Spokane & Eastern Trust Company.
R. J. VENABLES and
H. B. RIGG of Counsel,
Attorneys for Central Bank & Trust Company.
PETERS & POWELL,
Attorneys for United States Steel Products Com-
pany. [152]

Certificate of Judge to Statement of Evidence.

I, F. H. Rudkin, Judge of the above-entitled court, and the Judge before whom this cause was tried, find the foregoing statement and abstract of evidence to be a true and complete statement of the evidence given upon the trial of the cause, and that it is properly prepared; and I hereby approve it as a statement of the evidence to be filed in this cause and used on appeal herein.

The Clerk is directed to file such statement in this cause and make it a part of the record herein for the purposes of appeal.

Dated 5th January, 1923.

FRANK H. RUDKIN,
Judge. [153]

[Endorsed]: Number 881. Statement of Evidence on Appeal. Filed in the U. S. District Court Eastern Dist. of Washington. Jan. 6, 1923. Alan G. Paine, Clerk. Edw. E. Cleaver, Deputy.
[154]

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

UNITED STATES STEEL PRODUCTS COM-
PANY,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
CENTRAL BANK AND TRUST COM-
PANY, and E. L. FARNSWORTH, as di-
rector of Taxation and Examination of the
State of Washington,

Defendants.

Petition for Appeal.

The petition of the Spokane & Eastern Trust Company, a defendant herein, respectfully represents:

The defendant Spokane & Eastern Trust Company is aggrieved by the judgment and decree rendered herein signed 25th July, 1922, and filed 27th July, 1922, wherein and whereby judgment was given in favor of the plaintiff and against the defendant Spokane & Eastern Trust Company in the sum of forty-four thousand nine hundred forty-three and $84/100$ (\$44,943.84) dollars, together with interest thereon at the rate of six per cent per annum from 24th January, 1921, and for the costs of the action, and by all other relief awarded in said judgment and decree in favor of plaintiff and

against this defendant, and for the reasons specified in the assignment of errors filed herewith the defendant Spokane & Eastern Trust Company desires to appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit.

Said defendant presents herewith and makes a part of this application an assignment of errors in this cause and tenders a bond in such amount as the Court may require for the purposes of the appeal, and prays that the petition may be allowed and that a transcript of the entire records, proceedings, testimony and papers upon which the said decree was made, duly authenticated, shall be sent to the Circuit Court of Appeals for the Ninth Circuit in the manner and form and at the [155] time prescribed by law and by the rules of said Circuit Court of Appeals.

Said defendant prays for all orders necessary in the premises and for general relief.

F. H. GRAVES,

W. G. GRAVES,

B. H. KIZER,

Solicitors for Defendant Spokane & Eastern Trust
Company.

[Endorsed]: Filed in the U. S. District Court,
Eastern District of Washington. Filed Jan. 6,
1923. Alan G. Paine, Clerk. By Edwd. E.
Cleaver, Deputy. [156]

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

UNITED STATES STEEL PRODUCTS COM-
PANY,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
CENTRAL BANK AND TRUST COM-
PANY, and E. L. FARNSWORTH, as Di-
rector of Taxation and Examination of the
State of Washington,

Defendants.

Assignment of Errors.

The defendant Spokane & Eastern Trust Com-
pany, being desirous of appealing to the Circuit
Court of Appeals for the Ninth Circuit from the
final decree rendered in this cause, bearing date
25th July, 1922, and filed 27th July, 1922, submits
the following assignment of errors which it asserts
and intends to urge on such appeal.

The District Court erred:

I. In holding that the allegations of the com-
plaint were supported by the proof save with re-
spect to the particular manner in which the check
of the Yakima Hardware Company was paid.

II. In holding that the transactions between
the Central Bank & Trust Company and Spokane
& Eastern Trust Company were contrary to sound
law and good morals.

III. In holding that the relation of trustee and *cestui que trust* subsisted between the Central Bank & Trust Company and plaintiff with respect to the proceeds of the check of the Yakima Hardware Company which the Central Bank collected for plaintiff.

IV. In holding that the relation of trustee and *cestui que trust* subsisted between the Spokane & Eastern Trust Company and plaintiff.

V. In holding that the proceeds of the check aforesaid was traceable as a trust fund in the hands of either the Central Bank & Trust Company or the Spokane & Eastern Trust Company. [157]

VI. In refusing to dismiss the action as against the Spokane & Eastern Trust Company for want of equity.

VII. In rendering a decree for any relief or in any amount in plaintiff's favor and against defendant Spokane & Eastern Trust Company.

VIII. Finally, if it be held that plaintiff was entitled to any relief against the defendant Spokane & Eastern Trust Company, then the District Court erred in not reducing the amount of the recovery by the amount of the drafts drawn upon the Spokane & Eastern Trust Company by the Central Bank & Trust Company and paid by the former prior to the time it was informed of the draft for \$51,188.04 drawn upon it by the Central Bank & Trust Company in favor of the Seattle National Bank and of the circumstances surrounding the drawing of such draft.

WHEREFORE, the defendant Spokane & Eastern Trust Company prays that the said decree be reversed and that the District Court be directed to dismiss the action as to such defendant.

F. H. GRAVES,
W. G. GRAVES,
B. H. KIZER,

Solicitors for Defendant Spokane & Eastern Trust Company.

[Endorsed]: Filed in the U. S. District Court, Eastern District of Washington. Filed Jan. 6, 1923. Alan G. Paine, Clerk. By Edwd. E. Cleaver, Deputy. [158]

In the District Court of the United States for the Eastern District of Washington, Southern Division.

UNITED STATES STEEL PRODUCTS COMPANY,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
CENTRAL BANK AND TRUST COMPANY, and E. L. FARNSWORTH, as Director of Taxation and Examination of the State of Washington,

Defendants.

Order Allowing Appeal.

Upon consideration of the petition and an assign-

ment of errors presented therewith, it is ordered that an appeal be allowed to the defendant Spokane & Eastern Trust Company from the decree rendered in this cause dated 25th July, 1922, and filed 27th July, 1922, wherein and whereby judgment was rendered against the said defendant in favor of plaintiff in the sum of forty-four thousand nine hundred forty-three and 84/100 (\$44,943.84) dollars, and for other relief, and that the appeal shall be returnable to the United States Circuit Court of Appeals for the Ninth Circuit upon the execution of a bond in the penal sum of one thousand (\$1,000) dollars.

It appearing that the defendants Central Bank & Trust Company and E. L. Farnsworth, as director of taxation and examination of the State of Washington, have in writing stated that they would not join the defendant Spokane & Eastern Trust Company in its appeal herein and that they waived their right to so join,—

IT IS ORDERED that the defendant Spokane & Eastern Trust Company may prosecute its appeal independently of its codefendants and that they need not be joined as appellants with it for the purposes of this appeal. [159]

And it is still further ordered that a transcript of the record, in accordance with the provisions of law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, shall be authenticated and transmitted to the Court of Appeals as prayed.

Dated 5th January, 1923.

FRANK H. RUDKIN,
Judge.

[Endorsed]: Filed in the U. S. District Court, Eastern District of Washington. Filed Jan. 6, 1923. Alan G. Paine, Clerk. By Edwd. E. Cleaver, Deputy. [160]

In the District Court of the United States for the Eastern District of Washington, Southern Division.

IN EQUITY.

UNITED STATES STEEL PRODUCTS COMPANY,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
CENTRAL BANK AND TRUST COMPANY, and E. L. FARNSWORTH, As
Director of Taxation and Examination of the
State of Washington,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, the Spokane & Eastern Trust Company, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound

unto the United States Steel Products Company in the sum of One Thousand Dollars, to be paid to the said United States Steel Products Company, its successors or assigns, to which payment well and truly to be made we bind ourselves and our successors, jointly and severally by these presents.

Sealed with our seals and dated this 5th day of January, in the year of our Lord one thousand nine hundred and twenty-three.

WHEREAS, at a term of the District Court of the United States for the Eastern District of Washington in the Southern Division thereof, in a suit depending in said court between the United States Steel Products Company, plaintiff, and the Spokane & Eastern Trust Company and others, defendants, a decree was rendered in favor of plaintiff and against the defendant Spokane & Eastern Trust Company; and

WHEREAS, the defendant Spokane & Eastern Trust Company has sued out an appeal to reverse such decree and has prayed the allowance of the appeal and citation directed to the United States Steel Products Company to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit; [161]

NOW, the condition of the above obligation is such that if the aforesaid Spokane & Eastern Trust Company shall prosecute its appeal to effect and answer all costs if it fail to make its plea good, then the above obligation shall be void; otherwise it shall

remain in full force and virtue.

SPOKANE & EASTERN TRUST COMPANY,

[Seal]

By CONNER MALOTT,

Its Vice-President.

B. M. CAMPBELL,

Secty.

FIDELITY & DEPOSIT CO. OF MARY-
LAND,

By S. M. SMITH,

Attorney-in-Fact.

[Seal]

Attest: W. S. McCREA,

General Agent.

The foregoing bond is approved for the purposes
of the appeal herein, 5th January, 1923.

FRANK H. RUDKIN,

Judge.

[Endorsed]: Filed in the U. S. District Court,
Eastern District of Washington. Filed Jan. 6,
1923. Alan G. Paine, Clerk. By Edwd. E.
Cleaver, Deputy. [162]

[Endorsed]: No. 3983. United States Circuit
Court of Appeals for the Ninth Circuit. Spokane
& Eastern Trust Company, a Corporation, Appel-
lant, vs. United States Steel Products Company,
a Corporation, Appellee. Transcript of Record.
Upon Appeal from the United States District

Court for the Eastern District of Washington,
Southern Division.

Filed February 3, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the Circuit Court of Appeals for the Ninth
Circuit.

SPOKANE & EASTERN TRUST COMPANY,
Appellant,

vs.

UNITED STATES STEEL PRODUCTS COM-
PANY,

Appellee,

and

CENTRAL BANK & TRUST COMPANY and E.
L. FARNSWORTH, as Director, etc.,

Defendants.

**Statement of Errors for Purpose of Printing
Record.**

The appellant will rely upon the following errors
in presenting its appeal herein, to wit:

The District Court erred:

1. In holding that the transactions between the
Central Bank & Trust Company and the Spokane

& Eastern Trust Company were contrary to sound law and good morals.

2. In holding that the relation of trustee and *cestui que trust* subsisted between the Central Bank & Trust Company and the United States Steel Products Company with respect to the proceeds of the check of the Yakima Hardware Company which the Central Bank collected for the United States Steel Products Company.

3. In holding that the relation of trustee and *cestui que trust* subsisted between the Spokane & Eastern Trust Company and the United States Steel Products Company.

4. In holding that the proceeds of the check aforesaid were traceable as a trust fund in the hands of either the Central Bank & Trust Company or the Spokane & Eastern Trust Company.

5. In refusing to dismiss the action against the Spokane & Eastern Trust Company for want of equity.

6. In rendering a decree for any relief or in any amount in favor of the United States Steel Products Company and against the Spokane & Eastern Trust Company.

7. If it be held that United States Steel Products Company was entitled to any relief against the Spokane & Eastern Trust Company, then there was error in not reducing the amount of the recovery by the amount of the drafts drawn upon Spokane & Eastern Trust Company by the Central Bank & Trust Company and paid by the former prior to the time it was informed of the draft for \$51,188.04

drawn upon it by the Central Bank & Trust Company in favor of the Seattle National Bank and of the circumstances surrounding the drawing of such draft.

F. H. GRAVES,
W. G. GRAVES,
B. H. KIZER,

Solicitors for Spokane & Eastern Trust Company.

[Endorsed]: No. 3983. In the Circuit Court of Appeals, for the Ninth Circuit. Spokane & Eastern Trust Company, Appellant, vs. United States Steel Products Company, Appellee. Statement of Errors for Purpose of Printing Record. Filed Jan. 25, 1923. F. D. Monckton, Clerk. Re-filed Feb. 3, 1923. F. D. Monckton, Clerk.

Service of the within Statement of Errors accepted this 17th day of January, 1923.

PETERS & POWELL,
Attorneys for Appellee.

In the Circuit Court of Appeals for the Ninth
Circuit

SPOKANE & EASTERN TRUST COMPANY,
Appellant,

vs.

UNITED STATES STEEL PRODUCTS COM-
PANY,

Appellee,

and

CENTRAL BANK & TRUST COMPANY and
E. L. FARNSWORTH as Director, etc.,
Defendants.

Designation of Parts of Record to be Printed.

The appellant designates for printing the following portions of the record which it thinks necessary for the consideration of the errors on which it intends to rely on appeal, as shown by the statement of errors heretofore filed herein, to wit:

Complaint.

Answer of defendant Spokane & Eastern Trust Company.

Answer of defendants Central Bank & Trust Company and E. L. Farnsworth as Director of Taxation and Examination of the State of Washington.

Memorandum opinion of Judge Rudkin ordering the entry of a decree in the plaintiff's favor.

Stipulation entered into between the attorneys for all the parties dated 24th July, 1922, relative to certain promissory notes and choses in action which had been charged back by the Spokane & Eastern Trust Company to the Central Bank & Trust Company and returned to the latter company.

Decree.

Stipulation for the signing and certifying of the statement of evidence.

Statement of evidence.

Petition for appeal.

Assignment of errors.

Order allowing appeal and fixing bond.

Bond on appeal.

F. H. GRAVES,
W. G. GRAVES,
B. H. KIZER,

Solicitors for Spokane & Eastern Trust Company.

[Endorsed]: No. 3983. In the Circuit Court of Appeals, for the Ninth Circuit. Spokane & Eastern Trust Company, Appellant, vs. United States Steel Products Company, Appellee, and Central Bank & Trust Company and E. L. Farnsworth as director, etc., Defendants. Designation of Parts of the Record to be Printed. Filed Jan. 25, 1923. F. D. Monckton, Clerk. Re-filed Feb. 3, 1923. F. D. Monckton, Clerk.

Service of the within Statement of Errors accepted this 17th day of January, 1923.

PETERS & POWELL,
Attorneys for Appellee.

